

TEXAS ALCOHOLIC BEVERAGE COMMISSION

SUNSET STAFF REPORT

NOVEMBER 2006



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SUMMARY

Summary

This special purpose review of the Texas Alcoholic Beverage Commission (TABC) is a follow-up to the full Sunset review conducted in 2004. At that time, the Sunset Commission adopted and forwarded recommendations to the 79th Legislature, but the Sunset bill on TABC did not pass. Instead, the Legislature, through separate legislation, continued the agency for two years and focused the current Sunset staff review on the appropriateness of the Commission's 2004 recommendations. Based on this re-examination, Sunset staff concluded that the agency has made progress towards modernizing its operations, but that the changes in law recommended by the Sunset Commission in 2004 continue to be appropriate.

This report summarizes the current status of each of the issues raised by the Sunset Commission in 2004 and evaluates the appropriateness and ongoing need for each of the recommended changes. Sunset staff found that the agency has implemented all nine management actions that did not require a change in law, but that 15 of 18 statutory changes continue to be needed. While the agency has taken steps to address as many of the concerns as possible, several of the statutory changes could not be implemented without clear direction in law. In other cases, while the agency has implemented necessary changes, Sunset staff concluded that placing the requirement in law would still be appropriate to ensure that the practice is continued in the future.

Three of the 2004 recommendations are not included in this report. Two were addressed by other legislation, including the elimination of restrictions on the size of beer containers and changes concerning the sale of seized property, both of which were addressed in Senate Bill 1255 during the 79th Regular Session. The other issue not included in this report concerns the recommendation to allow TABC to renew



While TABC has made progress, the changes recommended by Sunset in 2004 are still appropriate.

licenses every two years, instead of every year, for establishments with no violations. According to TABC, its new computer system is designed for annual license renewals, and changing to two-year renewals would require costly reprogramming. Therefore, Sunset staff does not recommend adopting this change.

Finally, given the clear effort and improvements made by the agency over last two years, Sunset staff recommends that TABC be continued for the standard 12-year period, as opposed to the six-year period previously recommended by the Sunset Commission.

The following material summarizes the Sunset staff's evaluation of the Commission's 2004 recommendations on TABC that continue to be appropriate for consideration in 2006.

Issues and Recommendations

Issue 1

TABC Lacks the Clear Focus and Strategic Direction Needed in Today's Alcoholic Beverage Regulatory Environment.

Key Recommendations

- ◆ Update TABC's mission to better reflect today's alcoholic beverage regulatory environment and the agency's role in public safety issues.
- ◆ TABC should continue refining its new performance measures and developing the capabilities necessary to effectively analyze this data.

Issue 2

Statutory Changes Are Needed to Ensure TABC's Enforcement Efforts Are Fair, Consistent, and Focused on Public Safety.

Key Recommendations

- ◆ Require TABC to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties.
- ◆ Require TABC to develop a risk-based approach to enforcement and to better measure the impact of its enforcement activities on public safety.
- ◆ Require TABC to develop standard procedures for handling complaints and for tracking and analyzing complaint data.

Issue 3

Over-Regulation of Certain Business Practices Serves No Consumer Interest, Imposes Costs and Delays on the Industry, and Creates Excessive Burdens for the Agency.

Key Recommendations

- ◆ Eliminate label approval and testing for liquor and wine, and instead authorize TABC to register federal certificates of approval for these products.
- ◆ Give beer manufacturers the option of submitting laboratory analyses of their products to TABC or having their products tested by TABC.
- ◆ Eliminate fees set in statute for the approval of new alcoholic beverage products.
- ◆ Allow distributors to report retailers who are delinquent in making payments for liquor and wine by electronic mail or other means authorized by the agency.

Issue 4

TABC Should Continue Efforts to Resolve and Communicate Marketing Practices Issues.

Key Recommendation

- ◆ Require TABC to develop a formal process for making policy decisions regarding marketing practices regulations, and for communicating these decisions to agency staff and the industry.

Issue 5

TABC Should Ensure a Consistent and Formal Approach to Investigating and Resolving Complaints Against Its Employees.

Key Recommendations

- ◆ Require TABC to maintain an internal affairs function to ensure fair, effective, and impartial investigations of alleged misconduct by law enforcement officers and other employees.
- ◆ Require the agency to track and report complaint information to the Administrator and the Commission on a regular basis.

Issue 6

TABC Should Continue Working to Make as Much of Its Licensing Process Available Online as Possible.

Key Recommendation

- ◆ Direct TABC to reduce delays in the licensing process by providing for online license applications, renewals, and payment of fees.

Issue 7

The State Has Not Made Sufficient Efforts to Inform the Public of the Health Risks of Drinking Alcohol During Pregnancy.

Key Recommendation

- ◆ Require TABC to develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy.

Issue 8

Texas Has a Continuing Need for the Texas Alcoholic Beverage Commission.

Key Recommendation

- ◆ Continue the Texas Alcoholic Beverage Commission for 12 years.

Issue 9

Texas' System of Alcoholic Beverage Regulation Is Based on Prohibition-Era Concerns and Is in Need of Revision.

Key Recommendation

- ◆ Require the Legislature to establish a joint interim committee to study revision of the regulatory structure of alcoholic beverages in Texas.

Fiscal Implication Summary

None of the recommendations in this report would have a significant fiscal impact to the State.

ISSUES

TABC Lacks the Clear Focus and Strategic Direction Needed in Today's Alcoholic Beverage Regulatory Environment.

Summary

Key Recommendations

- ◆ Update TABC's mission to better reflect today's alcoholic beverage regulatory environment and the agency's role in public safety issues.
- ◆ TABC should continue refining its new performance measures and developing the capabilities necessary to effectively analyze this data.

Key Finding

- ◆ Although the agency has improved its strategic planning process in response to the 2004 Sunset recommendations, it would still benefit from having its mission better defined in statute.

Conclusion

The Alcoholic Beverage Code does not reflect the modern environment in which TABC operates. The Code also does not provide clear guidance to the agency on what its priorities or strategic direction should be. Without such direction, TABC has had difficulty focusing its efforts on issues with the greatest impact on public safety. In 2004, the Sunset Commission recommended that the Legislature provide TABC with a clearer mission and strategic direction that better reflect today's alcoholic beverage regulatory environment and the public safety needs of the state. Sunset staff assessed the current appropriateness of the recommendation and concluded that a well-defined statutory mission would provide the agency with a clearer focus and strategic direction.

Support

The Alcoholic Beverage Code defines the agency’s mission very broadly and requires it to tightly regulate the alcoholic beverage industry.



TABC is charged with protecting the welfare, health, peace, temperance, and safety of the people.

- ◆ TABC’s enabling statute, the Alcoholic Beverage Code, was originally enacted into law in 1935, two years after the end of Prohibition. The Code is “an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people” of Texas. The agency has adopted that statement as its mission and added language about facilitating fairness, balanced competition, and responsible behavior within the alcoholic beverage industry through voluntary compliance.
- ◆ The original purpose of regulating the alcoholic beverage industry was to prevent close financial and familial ties between the manufacturers and sellers of alcohol. Such ties were the main source of corruption in the alcoholic beverage industry and of the unregulated sale of alcohol to consumers before and during Prohibition. As a result, the Legislature created TABC to supervise, inspect, and regulate the production, importation, exportation, transportation, sale, storage, distribution, and possession of alcoholic beverages. The agency accomplishes this mission by licensing manufacturers, wholesalers, and retailers and performing traditional law enforcement activities to uncover violations of the Alcoholic Beverage Code.

Although the agency has improved its strategic planning process in response to the 2004 Sunset recommendations, it would still benefit from having its mission better defined in statute.



TABC’s mission has not kept pace with changes in the industry or social concerns regarding alcohol.

- ◆ In 2004, the Sunset review found that TABC’s statutory mission had not kept pace with changes in the industry it regulates or social concerns regarding alcohol. Without clear guidance in statute, the agency’s priorities could vary significantly depending on decisions of the agency’s executive management, industry pressure on the agency, and the discretion of individual agents in the field.

The review also found that the agency’s strategic planning process did not reflect or address the evolving needs of the agency and lacked key elements. For example, the strategic planning process did not adequately reflect the unique challenges of each of the agency’s five regions. Also, many of the agency’s performance measures did not provide a useful indication of whether the agency was successfully performing its functions or what impact it was having on licensees’ compliance with the law. Other missing elements included comprehensive research on issues and demographics affecting the agency and coordination and overall guidance for its many educational efforts.

- ◆ As a result of these findings, the Sunset Commission recommended a series of statutory changes and management actions to provide TABC with a clear mission and guidance to improve its strategic planning process. The chart, *Status of 2004 Strategic Direction Recommendations*, details the Sunset recommendations and what the agency has done to implement them. As the Sunset bill on TABC did not pass in 2005, the statutory change was not enacted.

Status of 2004 Strategic Direction Recommendations

| 2004 Recommendation | Status |
|--|--|
| Change in Statute | |
| Update TABC’s mission to better reflect today’s alcoholic beverage regulatory environment and the agency’s role in public safety issues. | Change in law still needed. While the agency has taken steps to refocus its efforts, a change in statute would eliminate out-of-date language going back to Prohibition and clearly focus the agency on more modern concerns. |
| Management Action | |
| TABC should improve its strategic planning process so that it helps prioritize the agency’s activities and measures its progress toward meeting its goals. | Implemented, no action needed. Although TABC does not have a new statutory mission, it has worked with the Legislative Budget Board (LBB) and Governor’s Office to add performance measures to its strategic plan that more directly relate to the agency’s functions and measure the effectiveness of its activities. The agency developed these new measures using input from regional staff, industry groups, and communities around the state. The agency has created procedures to assess its progress towards both statewide and region-specific goals and identify needed organizational and operational changes. The agency plans to work with LBB and the Governor’s Office over the next two years to continue refining its performance measures. |
| The agency should focus more effort on research and data collection to better support its mission and goals. | Implemented, no action needed. TABC created a new division with responsibility to conduct external research on issues related to the agency’s mission. This new division employs a statistician to conduct empirical research and study trends. The agency is also in the process of initiating new computer systems that will greatly enhance its ability to collect and analyze data. |
| TABC should evaluate alternative approaches for administering its educational programs to better support its mission and goals. | Implemented, no action needed. TABC created a new division to administer and coordinate all of the agency’s education programs. |

- ◆ Although TABC has complied with the management recommendations, statutory change is necessary to update its mission to better reflect the current regulatory environment and the agency’s role in public safety. Without a clearer strategic direction set in statute, the agency cannot fully develop its new strategic planning process.

Recommendations

Change in Statute

1.1 Update TABC's mission to better reflect today's alcoholic beverage regulatory environment and the agency's role in public safety issues.

This recommendation would better define the agency's mission in statute by updating the existing language to focus the agency on:

- ◆ protecting the public safety by deterring and detecting violations of the law;
- ◆ promoting legal and responsible alcohol consumption;
- ◆ ensuring fair competition within the alcoholic beverage industry;
- ◆ ensuring consistent, predictable, and timely enforcement of the law;
- ◆ ensuring a consistent, predictable, and timely licensing process;
- ◆ promoting and fostering voluntary compliance with the law; and
- ◆ communicating the requirements of the law clearly and consistently.

These changes would provide a framework for TABC to have a clear mission that better reflects the modern alcoholic beverage regulatory environment and the public safety needs of the State.

Management Action

1.2 TABC should continue refining its new performance measures and developing the capabilities necessary to effectively analyze this data.

TABC should continue working with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy to ensure its performance measures accurately reflect its new statutory mission, as laid out in Recommendation 1.1. The agency also needs to continue developing its data collection and analysis capabilities to be able to report the kind of data necessary to support its new strategic planning process and performance measures. Further, since the agency is making many changes to its operations as a result of the 2004 Sunset recommendations, it will need to ensure that its strategic planning process reflects these changes and that it effectively measures the performance of its new and restructured functions.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

Statutory Changes Are Needed to Ensure TABC's Enforcement Efforts Are Fair, Consistent, and Focused on Public Safety.

Summary

Key Recommendations

- ◆ Require TABC to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties.
- ◆ Require TABC to develop a risk-based approach to enforcement and to better measure the impact of its enforcement activities on public safety.
- ◆ Require TABC to develop standard procedures for handling complaints and for tracking and analyzing complaint data.

Key Finding

- ◆ TABC has implemented many of the 2004 Sunset recommendations aimed at improving the agency's enforcement functions; however, statutory changes are still needed.

Conclusion

TABC performs a variety of enforcement activities to protect the public's safety and ensure compliance with alcoholic beverage regulations. In 2004, Sunset staff evaluated how the agency managed these activities and determined that it lacked the necessary procedures and oversight to ensure fair, consistent, and effective enforcement of the law.

Consequently, the Sunset Commission adopted a series of statutory and management recommendations designed to strengthen the agency's enforcement process, ensure the fair and consistent application of penalties, and redirect its enforcement efforts toward more serious violations. Sunset staff evaluated the ongoing need for these changes and found that TABC has taken numerous steps to implement the Sunset Commission's recommendations regarding enforcement, especially all of the management changes. However, since the Sunset legislation did not pass, statutory changes are still necessary to ensure that the agency has the authority to fully enact the improved enforcement procedures, and continues these practices in the future.

Support

TABC performs a variety of functions to deter, detect, and resolve violations of the Alcoholic Beverage Code.

- ◆ TABC employs 300 law enforcement agents who protect public safety by enforcing laws related to the sale and consumption of alcoholic beverages. These agents work out of 52 field offices located throughout the state in five enforcement regions. TABC agents perform a wide range of law enforcement activities, including investigating complaints; conducting minor stings and other undercover operations; monitoring special events where alcohol is sold; and inspecting roughly 78 percent of the state's 39,200 licensed retail establishments, such as bars and liquor stores, each year.
- ◆ TABC employs 70 compliance staff across the state to ensure licensees pay their taxes and stay in compliance with the law and agency rules. TABC's compliance officers perform a wide variety of activities, including reviewing monthly tax returns and conducting on-site audits of wholesalers who pay the tax. The agency also conducts audits to ensure compliance with laws governing the operation of private clubs and requirements for food and beverage permit holders. In fiscal year 2006, compliance officers analyzed about 32,940 excise tax reports, and conducted 93 on-site excise tax audits, 177 private club analyses, and 1,074 food and beverages analyses.
- ◆ Through these law enforcement and compliance activities, TABC staff find administrative and criminal violations. Enforcement agents may take three types of action in response to a violation. They may file an administrative case if it involves a licensee who violates TABC law or rule; write a criminal citation against an individual who commits a misdemeanor or felony offense; or give a verbal or written warning. Compliance staff may also take administrative actions to resolve violations they find through their audits and other compliance activities.

TABC authorizes its agents in the field, and compliance staff, to resolve administrative violations by assessing fines or recommending the temporary suspension or cancellation of a license. Agency staff use a standard penalty chart laid out in rule to determine the appropriate penalty for each violation.

TABC has implemented many of the 2004 Sunset recommendations aimed at improving the agency's enforcement functions; however, statutory changes are still needed.

- ◆ The 2004 Sunset review found that TABC's enforcement functions lacked consistency and fairness and were not prioritized according to the threat posed to public safety. The review also found that TABC did not have reliable systems for managing complaints from the public or other sources, nor were they performing data collection or analysis to identify trends or problems facing the State with respect to alcoholic beverage laws.



TABC employs 300 law enforcement agents and 70 compliance staff across the state.



In 2004, TABC's enforcement lacked consistency and fairness.

- ◆ As a result of these findings, the Sunset Commission recommended a series of statutory changes and management actions to significantly strengthen TABC's enforcement functions. Over the past two years, TABC has taken steps to implement all of the Sunset recommendations regarding enforcement. The chart, *Status of 2004 Enforcement Recommendations*, details the Sunset recommendations and what the agency has done to implement them.
- ◆ Although the agency has made a sincere effort to comply with these recommendations, it would still benefit from having statutory language to ensure that the agency fully implements these updated practices and future agency administrators continue them. No further action is needed on the management actions as the agency has fully addressed these concerns.

Status of 2004 Enforcement Recommendations

| 2004 Recommendation | Status |
|--|---|
| Change in Statute | |
| Require TABC to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties. | Change in law still needed. The agency has prepared proposed amendments to the schedule of sanctions consistent with the Sunset Commission's recommendation. The amendments link the seriousness of the offense to the severity of the sanction, and require that deviations due to mitigating factors be justified and approved in writing. Adoption of the revised schedule is subject to the rulemaking process. |
| Require TABC to develop a risk-based approach to enforcement and to better measure the impact of its enforcement activities on public safety. | Change in law still needed. TABC has implemented policies and procedures consistent with this recommendation, hosted staff training sessions, and will begin implementation in the field shortly. Computer systems are in place to collect and track the relevant data, and a statistician has been hired to conduct analysis and identify trends. However, the development of automated reports and procurement of systems necessary for the statistician to do her job, is ongoing. |
| Require TABC to develop standard procedures for handling complaints and for tracking and analyzing complaint data. | Change in law still needed. The enforcement policy and procedures manual has been updated to include priority categories, and to direct supervisors to assign a category to open and new complaints. Complaint history of the licensee is also taken into account, and field investigations are prioritized according to risk. Data collection systems have been improved to capture more information about each complaint, such as the source, details of the investigation, and the outcome. Data reporting systems capable of tabulating and analyzing some, but not all, of the data elements described in the recommendation are in place. More sophisticated reporting and analysis is still needed to identify trends and problems. |

Status of 2004 Enforcement Recommendations (cont.)

| 2004 Recommendation | Status |
|---|---|
| Management Action | |
| TABC should better define its performance measures to more accurately reflect the agency's enforcement activities. | Implemented, no action needed. TABC has worked with the Legislative Budget Board (LBB) and the Governor's Office to adopt new performance measures designed to measure the impact of its enforcement activities. Throughout the next two years, TABC will continue to work with LBB and the Governor's Office to evaluate the new performance measures, and to determine whether they are working as intended. |
| The agency should develop standard procedures for conducting routine inspections of licensed establishments that include the use of a checklist and non-commissioned staff. | Implemented, no action needed. The agency has developed standard procedures for conducting routine inspections, and has trained compliance and enforcement staff in these procedures. Non-commissioned compliance staff are conducting many of the routine, low-risk inspections that the commissioned officers previously did, and a checklist has been implemented for these inspections. |
| TABC should develop and implement a plan to increase the time its agents spend on enforcement activities. | Implemented, no action needed. TABC has developed a plan and implementation is ongoing. The agency has transferred some licensing functions from enforcement to compliance staff. As a result, the agency has reduced the amount of time its agents spend on licensing duties from 15 percent of their time to 3 percent. As implementation continues, the amount of time agents spend on functions not directly related to enforcement should continue to drop. |
| The agency should update its enforcement policies and procedures manual. | Implemented, no action needed. The agency has updated its enforcement policies and procedures manual, and training on the new manual has begun. |

Recommendations

Change in Statute

2.1 Require TABC to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties.

This recommendation would require TABC to replace its existing standard penalty chart with one that reflects its full penalty authority and provides more complete guidance in assessing penalties. The agency's schedule of sanctions should include both the number of days of suspension for a particular violation and the corresponding fine amount. In developing the schedule, the agency needs to reflect the range of fines it can assess, from \$150 to \$25,000, according to the seriousness of the offense, the history of compliance, and other criteria set forth in the Alcoholic Beverage Code.¹ The agency's schedule should address the most common types of violations, including those that apply to wholesalers and manufacturers. The schedule should also reflect the agency's more recent statutory authority with respect to sanctions against retailers for minor-related offenses.²

The schedule of sanctions should allow for deviations due to mitigating or aggravating factors. However, the agency should develop clear policies to guide its staff in evaluating mitigating or aggravating factors in different circumstances, and how these factors could affect the penalty assessment. As part of this recommendation, the agency should require staff to report to Headquarters for approval of all cases in which executive management determines such approval is needed to allow deviation from the schedule.

The Commission should adopt the new schedule of sanctions in rules, providing for input from both the industry and the public. In addition, the agency should post its new schedule of sanctions on its website. This recommendation would ensure that the agency is taking more consistent and appropriate disciplinary actions against licensees.

2.2 Require TABC to develop a risk-based approach to enforcement and to better measure the impact of its enforcement activities on public safety.

This recommendation would require the agency to develop policies and procedures for more effectively conducting and overseeing its enforcement activities according to the following provisions.

- ◆ Require TABC to develop a risk-based approach to conducting its enforcement activities by focusing on detecting serious violations with an impact on public safety, and monitoring businesses with a history of complaints and violations, and any other factors the agency deems important.
- ◆ Require TABC to develop benchmarks and goals to track key enforcement activities and their results. The agency should track the number of enforcement activities by type, the number of violations detected from each activity, the amount of time spent on specific enforcement activities, and any other information determined necessary by executive management. TABC should also make use of this and other information to compare regional performance and determine best practices.
- ◆ Require TABC to track and analyze the nature of violations detected, their disposition, and the businesses that produce the most serious violations, statewide and per region. The agency should compile detailed statistics and analyze trends to get a clearer picture of problems facing the state. The agency should summarize these statistics and trends for executive management on a monthly basis and on a quarterly basis for the Commission, as well as making this information available on its website.

This recommendation would ensure that the agency places its limited enforcement resources where they are needed most.

2.3 Require TABC to develop standard procedures for handling complaints and for tracking and analyzing complaint data.

This recommendation would require the agency to develop policies and procedures for effectively managing the complaints the agency receives according to the following provisions.

- ◆ Require the Commission to adopt rules that clearly define the agency's complaint process from receipt to disposition.
- ◆ Require the agency to address complaints according to risk by placing complaints in priority order so that the agency handles the most serious problems first.
- ◆ Require TABC to develop a standard form for the public to make a complaint against an establishment. The complaint form should be available to the public on the agency's website.

- ◆ Require TABC to compile detailed statistics and analyze trends on complaint information to get a clearer picture of problems people have with its licensees. This complaint data should include information such as the nature of complaints and their disposition, and the length of time to resolve complaints. The agency should also track this information on a regional basis. The agency should report this information monthly to executive management and quarterly to the Commission. As part of this recommendation, TABC should make general information about the nature and disposition of complaints available on its website.

This recommendation would allow the agency to identify problems and trends, and focus resources where they are needed most.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

¹ Texas Alcoholic Beverage Code, Section 11.641.

² Texas Alcoholic Beverage Code, Section 106.13.

Over-Regulation of Certain Business Practices Serves No Consumer Interest, Imposes Costs and Delays on the Industry, and Creates Excessive Burdens for the Agency.

Summary

Key Recommendations

- ◆ Eliminate label approval and testing for liquor and wine, and instead authorize TABC to register federal certificates of approval for these products.
- ◆ Give beer manufacturers the option of submitting laboratory analyses of their products to TABC or having their products tested by TABC.
- ◆ Eliminate fees set in statute for the approval of new alcoholic beverage products.
- ◆ Allow distributors to report retailers who are delinquent in making payments for liquor and wine by electronic mail or other means authorized by the agency.

Key Finding

- ◆ TABC has implemented some of the 2004 Sunset Commission recommendations to reduce over-regulation of business practices, but statutory changes are still needed.

Conclusion

The 2004 Sunset review examined a broad range of regulations that TABC enforces regarding the production, approval, and distribution of alcoholic beverages. Sunset staff found that eliminating regulation that is duplicative, unnecessarily burdensome for the agency, or not clearly tied to public safety or consumer interests, would improve TABC's oversight of the industry. Though the agency has implemented some of the 2004 Sunset recommendations, it still needs statutory authority to effect all of the changes envisioned by the Commission.

Support

TABC regulates the business practices of the alcoholic beverage industry to protect consumers and prevent undue influence of manufacturers and distributors over retailers.

- ◆ TABC's statute requires the agency to regulate and enforce certain industry business practices to protect consumers from unsafe or misrepresented products, to ensure against marketing that might encourage excessive consumption, and to prevent manufacturers and distributors from monopolizing retail sales. The law directs TABC to ensure that manufacturers and distributors do not control retailers through unlimited inducements or the extension of credit that would provide an unfair advantage to one retailer over another. The textbox, *Key TABC Business Practices Regulations*, summarizes a few of these key regulations.

Key TABC Business Practices Regulations

TABC accomplishes its oversight of alcoholic beverage industry business practices through the following regulations.

New Alcoholic Beverage Approval

TABC staff approves new products to ensure that labels accurately represent the content and perform chemical analysis to ensure product quality, alcohol content, and that the container holds the stated amount.

Credit Law – Liquor and Wine

Prohibits distributors from extending credit to retailers beyond 25 days. Distributors must report any delinquent retailers to TABC. The agency maintains a delinquency list of those retailers that do not pay on time, and distributors cannot deliver products to retailers who owe money.



*TABC tested
1,300 products and
approved 11,800
labels in FY 2006.*

- ◆ TABC enforces these business practices regulations through several activities. The agency approves alcoholic beverage labels and conducts product testing. In fiscal year 2006, TABC tested approximately 1,300 products and approved more than 11,800 liquor, wine, and beer labels, collecting more than \$280,600 in fees. The agency also provides guidance to the industry on acceptable promotional practices, which are addressed in more detail in Issue 4 of this report. The agency monitors compliance with credit laws when conducting excise tax audits. In fiscal year 2006, TABC conducted 93 on-site audits, representing about 17 percent of all Texas distributors.

TABC has implemented some of the 2004 Sunset Commission recommendations to reduce over-regulation of business practices, but statutory changes are still needed.

- ◆ In 2004, the Sunset review found that TABC's liquor, beer, and wine approval processes duplicated federal processes, served no clear public health

purpose, and created unnecessary delays in getting products to market. Also, Texas law only allowed beer to be sold if it was bottled in one of six bottle sizes or four keg sizes, which did not relate to any public health or safety concern. Further, since the fee for TABC's approval process was set in statute, the agency did not have the flexibility to adjust the fee to adapt to changing circumstances. The review also found that statutory requirements for distributors to report delinquent retailers in writing to TABC created an administrative burden for the agency and the industry.

- ◆ As a result of these findings, the Sunset Commission recommended a series of changes to reduce unnecessary regulatory burdens on both the industry and the agency. Over the past two years, TABC has taken steps to implement some of the Sunset recommendations regarding business practices. However, the agency cannot initiate many of the recommendations without statutory change. The chart, *Status of 2004 Business Practices Recommendations*, details the Sunset recommendations and whether statutory change is still needed.

Status of 2004 Business Practices Recommendations

| 2004 Recommendation | Status |
|---|--|
| Change in Statute | |
| Eliminate restrictions on the size of beer containers that can legally be sold in Texas. | Change in law no longer needed. Restrictions eliminated by SB 1255 by Brimer, 79(R). |
| Eliminate label approval and testing for liquor and wine, and instead authorize TABC to register federal certificates of approval for these products. | Change in law still needed. The agency amended its rules so that it no longer requires new wine label approval for a vintage year change unless five years have passed since the last change. However, the agency cannot fully implement this recommendation without statutory approval. |
| Eliminate testing for beer, and instead require manufacturers to submit laboratory analyses of their products to TABC. | Change in law still needed. The agency cannot implement this change without statutory approval. |
| Eliminate fees set in statute for the approval of new alcoholic beverage products. | Change in law still needed. The agency cannot implement this change without statutory approval. |
| Allow distributors to report retailers who are delinquent in making payments for liquor and wine by e-mail or other means authorized by the agency. | Change in law still needed. TABC currently receives delinquent notices by fax and regular mail. It is also developing a system to allow distributors to report delinquent retailers through the agency's website, which should be completed by July 2007. A change in law would help ensure the agency fully implements this requirement. |
| Management Action | |
| TABC should work toward phasing out the paper-based delinquency list. | Implemented, no action needed. TABC made this information available electronically through its website beginning in June 2006. |



Small beer manufacturers would benefit from having the option of using TABC for their product testing.

- ◆ In reviewing the ongoing appropriateness of these recommendations, Sunset staff identified two provisions that would benefit from slight modification. First, staff determined that eliminating all beer testing in favor of allowing manufacturers to submit lab analyses could create an additional burden on small manufacturers. While large brewers have the resources to pay for testing by independent labs, small brewers may not. Therefore, beer manufacturers would benefit from being given the option of submitting lab analyses to TABC or requesting that the agency do the analyses for them. Further, the previous Sunset recommendation required brewers to use labs certified by the federal Alcohol and Tobacco Tax and Trade Bureau. However, allowing manufacturers to use any lab, as long as it is independent of their company and has a proven reputation, would allow greater flexibility in complying with this recommendation.

Recommendations

Change in Statute

3.1 Eliminate label approval and testing for liquor and wine, and instead authorize TABC to register federal certificates of approval for these products.

This recommendation would authorize the agency to implement a label registration program to accept federal Certificates of Label Approval for liquor and wine. This recommendation would eliminate statutory requirements for state approval of liquor labels, and clearly authorize TABC to implement a process to accept federal approvals for liquor and wine instead. Once TABC registers a federal certificate, the manufacturer would be in full compliance with agency standards. Allowing the agency to accept federal certificates of approval for liquor and wine would reduce delays to business in getting products to market. In addition, this recommendation would eliminate the state requirement for chemical analysis of liquor and wine under 7 percent alcohol by volume, which would no longer be required when accepting federal product approvals.

3.2 Give beer manufacturers the option of submitting laboratory analyses of their products to TABC or having their products tested by TABC.

This recommendation would eliminate the requirement that the agency perform chemical analyses of all new beer products. Instead, beer manufacturers would have the option of submitting to TABC analyses from independent, reputable laboratories indicating the alcohol content of their products. TABC would have the authority to establish standards for which labs it considers acceptable. If a manufacturer chooses not to submit an independent lab analysis, TABC would test their product. TABC would still approve all beer labels since Texas has additional labeling requirements that go beyond federal regulations.

3.3 Eliminate fees set in statute for the approval of new alcoholic beverage products.

This recommendation would remove the \$25 dollar fee set in statute for the approval of liquor and wine, and add language that the fee should be set to cover the costs of regulation, including implementing a label registration program. This recommendation would also eliminate the fee set in statute for the testing and approval of beer, and the agency would set this fee to cover the cost of these activities. Eliminating statutory caps on fees for product approval would give the agency the flexibility to set fees at the level necessary to recover liquor and wine registration and beer testing program costs as conditions change.

3.4 Allow distributors to report retailers who are delinquent in making payments for liquor and wine by electronic mail or other means authorized by the agency.

This recommendation would modify requirements for liquor and wine distributors to report in writing delinquent retailers by allowing for alternative means, such as e-mail or fax, for providing this information to the agency.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the State. The agency would be authorized to set fees for testing and approval to cover the cost of these activities. Laboratory analysis would also be on a cost-recovery basis.

TABC Should Continue Efforts to Resolve and Communicate Marketing Practices Issues.

Summary

Key Recommendation

- ◆ Require TABC to develop a formal process for making policy decisions regarding marketing practices regulations, and for communicating these decisions to agency staff and the industry.

Key Finding

- ◆ TABC has implemented the 2004 Sunset Commission recommendation aimed at improving the process for making and communicating marketing practices decisions, but statutory change is still needed.

Conclusion

The 2004 Sunset review examined a range of regulations that TABC enforces regarding the marketing and promotion of alcoholic beverages. Sunset staff found that TABC struggles to formulate, and communicate to the industry, important regulatory policies. Consequently, the Sunset Commission recommended that TABC improve its processes for consistently and reliably interpreting its regulations. In addition, the Commission recommended that TABC provide better quality information on regulatory policies to assist with compliance, and provide more regulatory certainty for the industry. Though the agency has begun to implement these changes, placing these requirements in law would help ensure the processes are continued into the future.

Support

TABC regulates the marketing practices of the alcoholic beverage industry to protect consumers and prevent undue influence of manufacturers and distributors over retailers.

- ◆ TABC's statute directs the agency to protect consumers from misrepresented products or deceptive advertising, and ensure against marketing that might encourage excessive consumption. The law also requires the agency to regulate and enforce certain industry marketing practices to prevent manufacturers and distributors from monopolizing retail sales.
- ◆ TABC monitors the alcoholic beverage marketplace, providing industry members technical assistance and guidance on regulations governing the marketing and promotion of alcoholic beverages, and approves the representation and packaging of alcoholic beverages. Staff also enforce restrictions on inducements manufacturers and distributors can provide to retailers, including:
 - limitations on the value of consumer novelties, promotional materials, and goods or services, and
 - limitations on marketing activities including advertising, sweepstakes, promotional events, and beverage sampling.

In addition, the agency ensures manufacturers, distributors, and retailers comply with marketing practices regulations by auditing financial records, inspecting licensed premises, investigating promotional events, and issuing administrative violations if necessary.



In the past, industry members had difficulty getting clear guidance from TABC on allowable marketing practices.

TABC has implemented the 2004 Sunset Commission recommendation aimed at improving the process for making and communicating marketing practices decisions, but statutory change is still needed.

- ◆ In 2004, Sunset staff found that TABC faced difficulties in consistently and reliably interpreting regulations governing the promotion and marketing of alcoholic beverages. The agency lacked an effective means for deciding and communicating interpretations of law, or changes in policy, regarding restrictions on the marketing of alcohol. The lack of consistency in providing the industry with regulatory guidance resulted in unnecessary costs to the industry and unfair enforcement.
- ◆ As a result of these findings, the Sunset Commission recommended statutorily requiring TABC to improve both its overall decision-making processes for marketing practices regulatory issues, and how the agency communicates these decisions to its staff and to the regulated community. The Sunset Commission recommended that the agency consider assembling a marketing practices working group made up of representatives of the three tiers of the liquor, wine, and beer industries to facilitate better

communication. Finally, the agency was directed to document its decisions by using a precedents manual or drafting formal advisories and making them available to agency staff and industry members electronically and through agency publications.

- ◆ While not required to by law, the agency has made several changes aimed at addressing these concerns. The agency has established an Internal Marketing Practices Committee made up of key agency staff to discuss core marketing practices issues presented by the industry. Once the committee reaches a consensus, the decision is written into a marketing practices bulletin and distributed to employees and affected industry members, and posted on the agency's website. In addition, the agency has designated marketing practices liaisons in each region to assist both internal and industry contacts on marketing issues.
- ◆ Sunset staff evaluated the ongoing need to place these requirements in law and concluded that it would be beneficial in ensuring that the agency continues its current efforts. However, while the Sunset Commission recommended the agency consider establishing an industry working group, TABC has found that such groups are often ineffective due to the level of competition among industry members. Instead, the agency has begun an effort to meet individually with industry representatives from the three tiers when developing key marketing practices policies. The meetings are designed to gather input and suggestions from a broad assortment of industry members.



Recommendation

Change in Statute

4.1 Require TABC to develop a formal process for making policy decisions regarding marketing practices regulations, and for communicating these decisions to agency staff and the industry.

This recommendation would require the agency to develop a formal process to improve both its overall decision-making processes for marketing practices regulatory issues, and how the agency communicates these decisions to its staff and to the regulated community. In implementing this recommendation, TABC staff should meet with a cross section of industry members to discuss regulatory issues and gather input for the drafting of marketing practices policies. The agency should document its decisions by using a precedents manual, or drafting formal advisories, and making these documents available to regional staff, as well as to industry members, through the agency's website, electronic mail, and agency publications.

This recommendation would improve TABC's ability to effectively regulate marketing practices by providing better information to the regulated community. Requiring the agency to consult with industry members on marketing practices issues, and making advisory opinions readily available, would provide agency staff with clearer guidance on how to enforce state law and provide the industry with greater regulatory certainty.

Fiscal Implication

This recommendation would not result in a fiscal impact to the State. The agency should implement this recommendation with existing resources.

TABC Should Ensure a Consistent and Formal Approach to Investigating and Resolving Complaints Against Its Employees.

Summary

Key Recommendations

- ◆ Require TABC to maintain an internal affairs function to ensure fair, effective, and impartial investigations of alleged misconduct by law enforcement officers and other employees.
- ◆ Require the agency to track and report complaint information to the Administrator and the Commission on a regular basis.

Key Finding

- ◆ TABC has made changes to better manage its internal affairs function, but statutory changes are still needed.

Conclusion

As a law enforcement agency, TABC must ensure that its employees maintain high standards of conduct by quickly and impartially investigating any complaints that allege misconduct on the part of an employee. The 2004 Sunset review found that because the agency's internal affairs function had no statutory or other formal basis for existence, and no written policies and procedures, it had come and gone over the years according to the management style of the agency's administrators.

The 2004 Sunset recommendations sought to solidify TABC's efforts to establish a permanent internal affairs function by creating a requirement for it in statute; and requiring the agency to adopt policies and procedures, which include best practices for the effective handling of personnel complaints. While the agency has implemented the changes, Sunset staff concluded that statutory changes are still necessary to ensure an effective internal affairs function into the future.

Support

TABC investigates allegations of misconduct by its staff through its Office of Professional Responsibility.

- ◆ Created in the late 1980's to combat widespread allegations of corruption among officers for exchanging favors with the regulated industry, TABC raised the profile of its internal affairs function and renamed it the Office of Professional Responsibility in 2004. Due to the law enforcement nature of its work and a high level of interaction with the public, TABC must maintain high standards of conduct and respond quickly and effectively to any complaints against its employees.

The agency employs about 300 commissioned peace officers across Texas who carry weapons and can make arrests, search licensed premises without a warrant, file criminal and administrative cases and execute other police powers. In addition, more than 100 ports of entry staff handle about \$3.6 million annually in cash from personal importation taxes on tobacco and alcohol collected at the Texas-Mexico border. Other TABC staff answer questions from licensees and conduct audits and inspections at licensed locations.



The agency must respond quickly and effectively to complaints from the public.

- ◆ The public, as well as TABC employees, may submit complaints over the Internet, through the mail, or through the agency's toll-free phone number. The table, *Personnel Complaints*, shows the type of complaints received in fiscal year 2006 and how they were resolved.
- ◆ The Office of Professional Responsibility (the Office) is composed of three employees who collect information on all personnel complaints and investigate, or assign to the appropriate regional supervisor, complaints of a serious nature, including discharge of firearms, excessive force, or corruption. Lesser complaints, such as tardiness, are handled by the employee's immediate supervisor and reviewed by the Human Resources Department with notification to the Office before action is taken. Both the Office and Human Resources may investigate sexual harassment complaints and often conduct them jointly.

Division directors determine the appropriate disciplinary action for all complaints of a more serious nature, while an employee's supervisor may resolve other complaints. Human Resources and the agency's General Counsel review all involuntary terminations before the agency notifies the employee. Employees may appeal disciplinary decisions recommending termination to the Administrator and all others to the Assistant Administrator.

**Personnel Complaints
FY 2006**

| Allegations | |
|--|------------|
| Unprofessional conduct | 59 |
| False arrest | 14 |
| Excessive force | 8 |
| Theft | 7 |
| Employee issues, such as abuse of sick leave and dual employment | 5 |
| Harassment | 5 |
| Conflict of interest | 4 |
| Sexual harassment | 4 |
| Failure to identify as law enforcement officer | 3 |
| Employee arrested | 3 |
| False reports | 3 |
| Discrimination | 2 |
| Failure to place tax stamp on alcohol brought across the Mexico border | 2 |
| Other | 10 |
| Total | 129 |

| Disposition | |
|--|------------|
| Unfounded | 54 |
| Pending | 30 |
| Closed – mainly due to complainant’s failure to provide sufficient information | 20 |
| Counseling | 9 |
| Resigned, retired, or terminated | 5 |
| Complaint against another agency’s employee, referred to that agency | 4 |
| Suspension without pay | 3 |
| Exonerated | 2 |
| Written reprimand | 1 |
| Probation | 1 |
| Total | 129 |

TABC has made changes to better manage its internal affairs function, but statutory changes are still needed.

- ◆ In 2004, the Sunset review found TABC did not effectively manage investigations of complaints against agency employees. Without statutory or regulatory guidance, various administrators had chosen to use the internal affairs function differently over the years, according to their individual management style. Until the current Administrator implemented a policy in April 2004 requiring all complaints to be reported to the Office of Professional Responsibility, regional supervisors investigated and disposed of personnel complaints with little or no oversight from Headquarters.

The Office of Professional Responsibility had just begun to report quarterly statistics to the Administrator on the type and number of allegations and their disposition. No reports or analysis on an annual basis were available to show particular trends or problem areas over the years. In addition, the Office did not report information on complaints or its activities to the Alcoholic Beverage Commission.

- ◆ As a result of these findings, the Sunset Commission recommended two statutory changes and a management action to improve the effectiveness of TABC’s internal affairs function. Over the past two years, the agency has made changes in response to the Sunset recommendations. The chart, *Status of 2004 Internal Affairs Recommendations*, details the Sunset recommendations and what the agency has done to implement them.

Status of 2004 Internal Affairs Recommendations

| 2004 Recommendation | Status |
|--|---|
| Change in Statute | |
| Require TABC to maintain an internal affairs function to ensure fair, effective, and impartial investigations of alleged misconduct by law enforcement officers and other employees. | Change in law still needed. TABC’s Office of Professional Responsibility functions as the central reporting point for all employee complaints. The Administrator appoints and oversees the Director of this Office. General guidelines for filing complaints are available on the agency’s website and in its employee manual. Placing this change in law would ensure this important function, and its independence, continues in the future. |
| Require the agency to track and report complaint information to the Administrator and the Commission on a regular basis. | Change in law still needed. The Director of the Office of Professional Responsibility reports weekly to the Administrator and quarterly to the Commission on complaints received and their outcome. Placing this requirement in law will ensure this reporting continues under new administrators in the future. |
| Management Action | |
| TABC should develop policies and procedures to guide its internal affairs process. | Implemented, no action needed. The Commission adopted policies and put them into effect in January 2005. The policies include time frames for the complaint process from receipt through appeal and a schedule of sanctions. The policies are provided to all employees and included in the agency’s human resources manual. Policies and complaint forms are available on the agency’s website. |

- ◆ Despite the agency’s progress, Sunset staff concluded that statutory changes are still needed to ensure that an effective internal affairs function remains in place under future administrators. No further action is needed on the management action as the agency has developed policies and procedures to guide its internal affairs process.

Recommendations

Change in Statute

5.1 Require TABC to maintain an internal affairs function to ensure fair, effective, and impartial investigations of alleged misconduct by law enforcement officers and other employees.

This recommendation would establish TABC’s internal affairs function in statute, with original jurisdiction over all personnel complaints. The internal affairs staff would coordinate and be the

central reporting point for, but need not conduct, all employee investigations. The staff may initiate complaint investigations independently, but would require the approval of a division director level or above to investigate an employee if no complaint had been made. The Commission, by rule, should outline general guidelines to inform the public of how to file a complaint and what steps the agency will take to address that complaint. The Administrator should appoint and directly oversee the head of internal affairs.

This recommendation would ensure that, as a law enforcement agency, TABC has an appropriate structure in place and follows standard procedures for complaint investigations to ensure that the agency fairly and effectively addresses any valid concerns raised. This recommendation would also help ensure that the internal affairs staff is able to perform its work with an appropriate degree of independence. Overall, these changes would result in a more consistent handling of complaints against agency employees within and across administrations, and would help ensure due process for employees who have complaints filed against them.

5.2 Require the agency to track and report complaint information to the Administrator and the Commission on a regular basis.

This recommendation would require the internal affairs staff to report to the Administrator, at least monthly, information about the nature and status of each complaint. It would also require the staff to report to the Alcoholic Beverage Commission, quarterly, a summary of information relating to investigations, including analysis of the number, type, and outcome of investigations, trend information, and recommendations to avoid future complaints. This recommendation would ensure internal affairs staff report necessary information to the Commission, the Administrator, division directors, and other appropriate personnel that can be used to help facilitate good management and policy decisions.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. The agency has established internal affairs policies and procedures, and installed a computerized tracking system. These efforts are underway and being achieved with existing resources.

TABC Should Continue Working to Make as Much of Its Licensing Process Available Online as Possible.

Summary

Key Recommendation

- ◆ Direct TABC to reduce delays in the licensing process by providing for online license applications, renewals, and payment of fees.

Key Finding

- ◆ While TABC is computerizing its licensing functions, statutory change will help ensure that the agency completes improvements needed for online license application, renewal, and fee payment.

Conclusion

Applying for and receiving a TABC license is paper-intensive and can be a lengthy process. In 2004, the Sunset Commission recommended that TABC provide for online license application, renewal, and payment of fees. Though some changes are in process, Sunset staff concluded that statutory change is still needed to ensure that online licensing is fully implemented and becomes standard procedure.

Support

TABC's licensing process relies heavily on paper-based forms.

- ◆ Currently, applicants seeking a license from TABC must submit paper-based forms to their local TABC office to start the licensing process. During this process, agency staff interview applicants, perform background checks, and review applications for completeness. Depending on the type of license, the applicant must also notify the public, receive local authorization, and secure bonds. Once an application is complete, local TABC staff forward it to Headquarters for final processing and issuance of the license. To renew a license and pay fees, licensees must mail forms and payments to TABC.

While TABC is computerizing its licensing functions, statutory change will help ensure that the agency completes improvements needed for online license application, renewal, and fee payment.

- ◆ In 2004, the Sunset Commission recommended that TABC provide online processing for applications, renewals, and payment of fees to reduce delays caused by the strictly paper-based system. While the agency is currently implementing changes that will computerize some licensing functions, the recommendation is still appropriate to ensure continued development of solutions to enable full online licensing in the future.
- ◆ In the past two years, the agency has initiated new systems that will computerize much of its internal licensing functions. The agency is also working to develop online renewal and fee payment options. In addition, the agency is involved in an initiative with the Governor's Office to provide a centralized licensing application platform for establishing new businesses in Texas. Applicants would be able to provide key information online to complete applications from several licensing agencies. The completed TABC application could then be printed and taken to their local TABC office to initiate processing. Interviews, background checks, local government certification, and public notification requirements would still need to be completed before forwarding the application to Headquarters.



TABC is working to develop online license renewal and fee payment options.

Recommendation

Change in Statute

6.1 Direct TABC to reduce delays in the licensing process by providing for online license application, renewal, and payment of fees.

This recommendation would ensure that applicants have access to an automated system that reduces delays in the licensing process by making license applications available online. Licensees could use the automated system to renew their licenses, check the status of license applications and renewals, and pay licensing fees.

Fiscal Implication

This recommendation would not have a fiscal impact to the State as it can be implemented using existing technology resources and funding.

The State Has Not Made Sufficient Efforts to Inform the Public of the Health Risks of Drinking Alcohol During Pregnancy.

Summary

Key Recommendation

- ◆ Require TABC to develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy.

Key Finding

- ◆ No significant changes have occurred to affect the Sunset Commission's 2004 recommendation to require licensed establishments that sell alcohol to display health warning signs regarding the risks of drinking alcohol during pregnancy.

Conclusion

TABC regulates all aspects of the alcoholic beverage industry to ensure the protection of the health, safety and welfare of Texans. In 2004, the Sunset Commission recommended that TABC develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy. Sunset staff assessed the current appropriateness of the recommendation and concluded that a change in law is still necessary to ensure that all establishments post this information.

Support

TABC regulates all phases of the alcoholic beverage industry to ensure protection of the welfare, health, peace, temperance, and safety of Texans.

- ◆ TABC conducts a variety of activities to fulfill its mission of protecting the health and safety of Texans. For instance, the agency administers several educational programs to warn the public about the dangers of underage drinking and over-consumption. The agency's enforcement agents and compliance staff routinely inspect licensed establishments to ensure they are in compliance with laws and regulations that relate to health and safety. During these inspections, staff check to see whether the signs required by law to be posted, are in fact posted. These signs include a sign providing information for filing a complaint against the establishment, and a sign prohibiting concealed weapons on the premises.

No significant changes have occurred to affect the Sunset Commission's 2004 recommendation to require licensed establishments to display health warning signs about the risk of drinking alcohol during pregnancy.

- ◆ In 2004, the Sunset Commission recommended that TABC develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy. The recommendation is still appropriate because these health warning signs are still not required in law despite the fact that, according to a survey by the Texas Department of State Health Services, 40 to 50 percent of women do not connect the use of alcohol with birth defects. While 19 other states and the District of Columbia require establishments that sell alcohol to post health warning signs about the risks of drinking alcohol during pregnancy, Texas has no similar requirement.¹
- ◆ TABC developed a health warning sign about drinking during pregnancy as part of a pilot project four years ago. The agency currently mails the sign to all on-premise establishments when they apply for and renew their licenses. However, establishments may choose whether to post the sign and TABC staff do not check for the sign during their routine inspections. To ensure that all establishments post the sign, the Alcoholic Beverage Code must make it a requirement.



While TABC now provides signs, establishments do not have to post them.

Recommendation

Change in Statute

7.1 Require TABC to develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy.

The recommendation would require TABC to adopt rules that require establishments selling alcohol for on-premise consumption, such as restaurants and bars, to post signs on men's and women's bathroom doors that remind the public of the health risks posed to unborn children when pregnant women drink alcohol.

Fiscal Implication

This recommendation would not have a fiscal impact to the State. TABC could incur some costs associated with printing and postage; however, the agency should be able to cover the cost within its current operating budget.

¹ Fetal Alcohol Spectrum Disorders Center for Excellence, State Laws Related to Posting of Alcohol Warnings at Point of Sale, <http://fasdcenter.samhsa.gov/resource/signageLaws.cfm>. Accessed: November 8, 2006.

Texas Has a Continuing Need for the Texas Alcoholic Beverage Commission.

Summary

Key Recommendation

- ◆ Continue the Texas Alcoholic Beverage Commission for 12 years.

Key Finding

- ◆ The agency has made a clear effort to implement as many of the 2004 Sunset Commission recommendations as possible and should be continued for the standard 12-year period.

Conclusion

The Texas Alcoholic Beverage Commission's responsibilities – regulating the production, distribution, and sale of alcoholic beverages, enforcing state laws regarding alcohol, and collecting taxes – are important to the State. However, in 2004, due to concerns about the agency's operations, the Sunset Commission recommended that the Legislature continue the agency for six years, rather than the standard 12 years. Sunset staff assessed the current appropriateness of that recommendation and concluded that the agency has made a clear effort to address the Sunset Commission's concerns and should be continued for 12 years.

Support

The Texas Alcoholic Beverage Commission's mission is to regulate every aspect of the alcoholic beverage industry.



TABC regulates all phases of the alcoholic beverage industry.

- ◆ The Legislature created the Texas Liquor Control Board in 1935, two years after the repeal of Prohibition. In 1970, the Legislature changed the name of the agency to the Texas Alcoholic Beverage Commission, but its functions have stayed essentially the same over the years. The agency's mission is to supervise and regulate all phases of the alcoholic beverage industry to ensure the protection of the welfare, health, peace, temperance, and safety of the people of Texas. The agency also works to facilitate fairness, balanced competition, and responsible behavior within the industry through voluntary compliance.
- ◆ To accomplish its mission, TABC licenses manufacturers, wholesalers, and sellers of alcoholic beverages; enforces the Alcoholic Beverage Code; collects taxes on alcoholic beverages; and provides educational programs to address issues such as underage drinking. A three-member, part-time Commission oversees the agency, with its 686 employees and \$35.3 million annual budget in fiscal year 2007. Licensing fees and surcharges cover the cost of the agency's budget.

The agency has made a clear effort to implement as many of the 2004 Sunset Commission recommendations as possible and should be continued for the standard 12-year period.



TABC has made significant improvements in its operations in response to the 2004 Sunset review.

- ◆ In 2004, the Sunset review found that Texas has a clear and continuing interest in regulating the alcoholic beverage industry and TABC is the most appropriate agency to do it. However, the review also found that the Legislature needed to make significant improvements to the Alcoholic Beverage Code and the agency's operations. As a result, the Sunset Commission recommended that the Legislature continue TABC for six years, rather than the standard 12 years. The shorter review period would allow the Legislature to assess the agency's progress in improving its operations. The Sunset Commission also made a series of recommendations, detailed in the other issues of this report, that would help the agency modernize its regulation of the industry and focus its resources more squarely on public safety issues.
- ◆ In the past two years, TABC has made significant improvements in its operations in response to the 2004 Sunset review. The other issues in the report show what the agency has done to implement the 2004 Sunset recommendations. Since TABC has made great strides to improve its operations over the past two years, and since it has been subject to two Sunset reviews in four years, the agency should now be continued for the standard 12 years. Further, the recommendations in this report will serve to cement the progress already begun by the agency.

Recommendation

Change in Statute

8.1 Continue the Texas Alcoholic Beverage Commission for 12 years.

This recommendation would continue TABC as an independent agency, responsible for regulating the alcoholic beverage industry.

Fiscal Implication

If the Legislature continues the current functions of the Texas Alcoholic Beverage Commission, using the existing organizational structure, the agency's annual appropriation of approximately \$35.3 million would continue to be required for its operation. Licensing fees and surcharges the agency collects from the alcoholic beverage industry more than cover TABC's entire appropriation.

Texas' System of Alcoholic Beverage Regulation Is Based on Prohibition-Era Concerns and Is in Need of Revision.

Summary

Key Recommendation

- ◆ Require the Legislature to establish a joint interim committee to study revision of the regulatory structure of alcoholic beverages in Texas.

Key Finding

- ◆ No significant changes have occurred to affect the Sunset Commission's 2004 recommendation to study revision of the Alcoholic Beverage Code.

Conclusion

Both TABC and the Alcoholic Beverage Code continue to reflect much of the strong controls in place since the post-Prohibition era and are in need of modernization. In 2004, the Sunset Commission recommended that the Legislature establish a joint interim committee to study revision of the alcoholic beverage regulatory structure. Sunset staff assessed the current appropriateness of the recommendation and concluded that the study is still necessary.

Support

Texas' system of alcoholic beverage regulation was put into place following the repeal of Prohibition.

- ◆ The Legislature created TABC in 1935, following the repeal of Prohibition, to very tightly regulate the alcoholic beverage industry. Fear of large scale corruption and uncontrolled consumption led to a system in which the State heavily regulates all aspects of the industry from manufacture to distribution and sale to the consumer.

No significant changes have occurred to affect the Sunset Commission's 2004 recommendation to study revision of the Alcoholic Beverage Code.

- ◆ In 2004, the Sunset Commission recommended that the Legislature establish a joint interim committee to study revision of the regulatory structure of alcoholic beverages in Texas. The recommendation is still appropriate because no significant changes were made to the Alcoholic Beverage Code during the last legislative session. Both the Code and Texas' regulatory structure continue to reflect much of the strong controls in place since the post-Prohibition era despite the fact that modern concerns focus more on fair and balanced competition, responsible drinking, and reduced government regulation. While the State still has an interest in regulating the alcoholic beverage industry, the Code and the regulatory structure are in clear need of modernization.
- ◆ In comparison, the State of Washington has recently undertaken its own study to revise its alcoholic beverage regulatory structure. In response to federal litigation, the Washington State Legislature passed a bill in early 2006 requiring the State Liquor Control Board to convene a task force to conduct a comprehensive review of its current alcohol laws. The task force consists of stakeholders representing producers, distributors, consumers, retailers, and legislators. The task force has met several times since May and will make its final report with recommended changes to the Legislature by December 15, 2006.¹
- ◆ During the 2004 review, Sunset staff also examined several organizational options for the regulation of the alcoholic beverage industry. For example, TABC's extensive licensing function could be performed by the Department of Licensing and Regulation, which performs a variety of standard licensing functions through its regulation of 22 professions. Further, while TABC collects several alcoholic beverage taxes, the Comptroller of Public Accounts collects the bulk of all state taxes, including other alcohol taxes. Although other agencies could perform these functions, Sunset staff did not find sufficient benefit to the State to warrant transfer of any or all of TABC's functions. However, re-evaluation of these organizational options within the context of other significant regulatory restructuring would be appropriate.



Recommendation

Change in Statute

9.1 Require the Legislature to establish a joint interim committee to study revision of the regulatory structure for alcoholic beverages in Texas.

The study should include at least the following:

- ◆ placing all responsibility for assessing and collecting taxes with the Comptroller;
- ◆ licensing only persons or entities that produce, manufacture, brew or distill regulated substances; or sell regulated substances to the public;
- ◆ placing all responsibility for the issuance and renewal of licenses with the Texas Department of Licensing and Regulation;
- ◆ charging TABC with enforcing all laws, rules, and regulations applicable to alcoholic beverages to foster, protect, and maintain the health and safety of the citizens of the State of Texas; and to promote open markets and competition in the sale of alcoholic beverages; and
- ◆ abolishing provisions in the Code related to marketing practices and retailer independence, and instead authorize TABC to adopt and enforce regulations on those subjects similar to the regulations promulgated by the Alcohol and Tobacco Tax and Trade Bureau for liquor, beer, and wine.

The Lieutenant Governor and Speaker of the House of Representatives would determine the composition of the interim committee. The committee should report its findings and recommendations to the Governor, Lieutenant Governor, and Speaker of the House by January 1, 2009.

Fiscal Implication

This recommendation would not have a fiscal impact to the State.

¹ Washington State Liquor Control Board, Three-Tier Review Task Force, http://www.liq.wa.gov/3ttf-site/3ttf_intro.html. Accessed: October 17, 2006.

ACROSS-THE-BOARD RECOMMENDATIONS



Texas Alcoholic Beverage Commission

| Recommendations | Across-the-Board Provisions |
|------------------------|---|
| Do Not Apply | 1. Require public membership on the agency’s policymaking body. |
| Update | 2. Require provisions relating to conflicts of interest. |
| Update | 3. Require unbiased appointments to the agency’s policymaking body. |
| Update | 4. Provide that the Governor designate the presiding officer of the policymaking body. |
| Update | 5. Specify grounds for removal of a member of the policymaking body. |
| Apply | 6. Require training for members of the policymaking body. |
| Apply | 7. Require separation of policymaking and agency staff functions. |
| Already in Statute | 8. Provide for public testimony at meetings of the policymaking body. |
| Modify | 9. Require information to be maintained on complaints. |
| Apply | 10. Require the agency to use technology to increase public access. |
| Apply | 11. Develop and use appropriate alternative rulemaking and dispute resolution procedures. |

Agency Information

Agency Information

Agency at a Glance

The Texas Alcoholic Beverage Commission (TABC) regulates all phases of the alcoholic beverage industry to ensure the protection of the welfare, health, peace, temperance, and safety of the people of Texas. The Legislature created the agency, originally called the Liquor Control Board, in 1935, in response to the repeal of Prohibition. Today, the agency endeavors to protect the people of Texas while facilitating fairness, balanced competition, and responsible behavior in the alcoholic beverage industry through voluntary compliance. To accomplish its mission, the Commission:

- ◆ licenses alcoholic beverage manufacturers, wholesalers, and retailers;
- ◆ enforces administrative and criminal laws in the Alcoholic Beverage Code;
- ◆ collects taxes on alcoholic beverages; and
- ◆ provides educational programs to address issues such as underage drinking.



On the Internet: TABC provides information about alcohol regulation in Texas at www.tabc.state.tx.us.

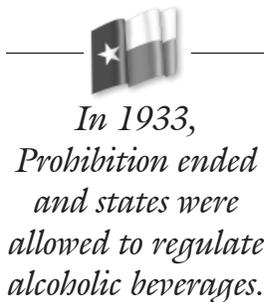
Key Facts

- ◆ **Funding.** The agency spent more than \$38.2 million for its operations in fiscal year 2006 – all of which came from licensing fees and surcharges.
- ◆ **Staffing.** In fiscal year 2006, the agency had 686 employees, including 300 commissioned law enforcement officers. About a quarter of these employees are located at the Headquarters in Austin, and the rest work in the agency's many field offices around the state and ports of entry along the Mexico border.
- ◆ **Licensing.** The agency issued or renewed 118,657 licenses in fiscal year 2006, including 79,108 retailer, 1,009 wholesaler, and 2,754 manufacturer licenses. Some businesses require more than one license to operate, and so the agency actually licensed 42,414 locations that year.
- ◆ **Enforcement.** In fiscal year 2006, the agency issued citations for 13,019 administrative violations and 20,487 criminal violations. As a result, the agency collected \$2.9 million in fines, temporarily suspended licenses or required civil penalties in 2,783 cases, and cancelled 77 licenses, among other enforcement actions. The agency also received 4,837 complaints and resolved 4,735.
- ◆ **Tax Collection.** In fiscal year 2006, TABC collected more than \$180 million in excise, personal importation, airline and passenger train taxes, and associated fees on alcoholic beverages.

- ◆ **Education.** The agency presented its educational programs to more than 153,400 people in fiscal year 2006, including school children, college students, local law enforcement personnel, civic and community group members, and licensed businesses. In that same year, the agency received \$380,000 in federal grants for educational programs, most of which it passed through to local law enforcement, advocacy, and university groups.

Major Events in Agency History

- 1836 The Republic of Texas imposed the first taxes on distilled spirits and malt beverages.
- 1920 Prohibition began following the ratification of the 18th Amendment to the U.S. Constitution.
- 1933 Prohibition ended following the ratification of the 21st Amendment to the U.S. Constitution, allowing individual states to regulate alcoholic beverages.
- 1935 The Legislature created the Texas Liquor Control Board to regulate all phases of the alcoholic beverage industry. Individual communities were authorized to hold local option elections to determine what kind of alcohol, if any, could be sold in their areas.
- 1970 The Legislature changed the name of the agency to the Texas Alcoholic Beverage Commission.
- 1971 The Legislature created a mixed beverage permit to allow the sale of liquor by the drink.
- 1986 In response to possible federal highway fund sanctions, the Legislature raised the legal age limit for alcoholic beverage consumption to 21. In subsequent years, the agency developed several enforcement and educational programs to deter and detect violations involving underage drinking.
- 1994 Following TABC's Sunset review, the Legislature transferred two TABC functions to other agencies. Collection of the mixed beverage gross receipts tax was transferred to the Comptroller of Public Accounts and bingo regulation, which TABC had administered since 1990, moved to the Texas Lottery Commission.



Organization

Policy Body

The Commission is composed of three members appointed by the Governor with advice and consent of the Senate to serve staggered six-year terms. The chart, *Texas Alcoholic Beverage Commission Policy Body*, contains information on current members. To be appointed to the Commission, an individual must have been a Texas resident for at least five consecutive years immediately before appointment and have no ties to the alcoholic beverage industry.

The Commission sets policies and adopts rules to carry out the provisions of the Alcoholic Beverage Code. It also selects the agency's Administrator and Internal Auditor and approves the strategic plan and legislative appropriations request. The Commission has delegated to the Administrator its authority to grant, refuse, suspend, and cancel licenses and permits. The Commission generally meets once a month in Austin.

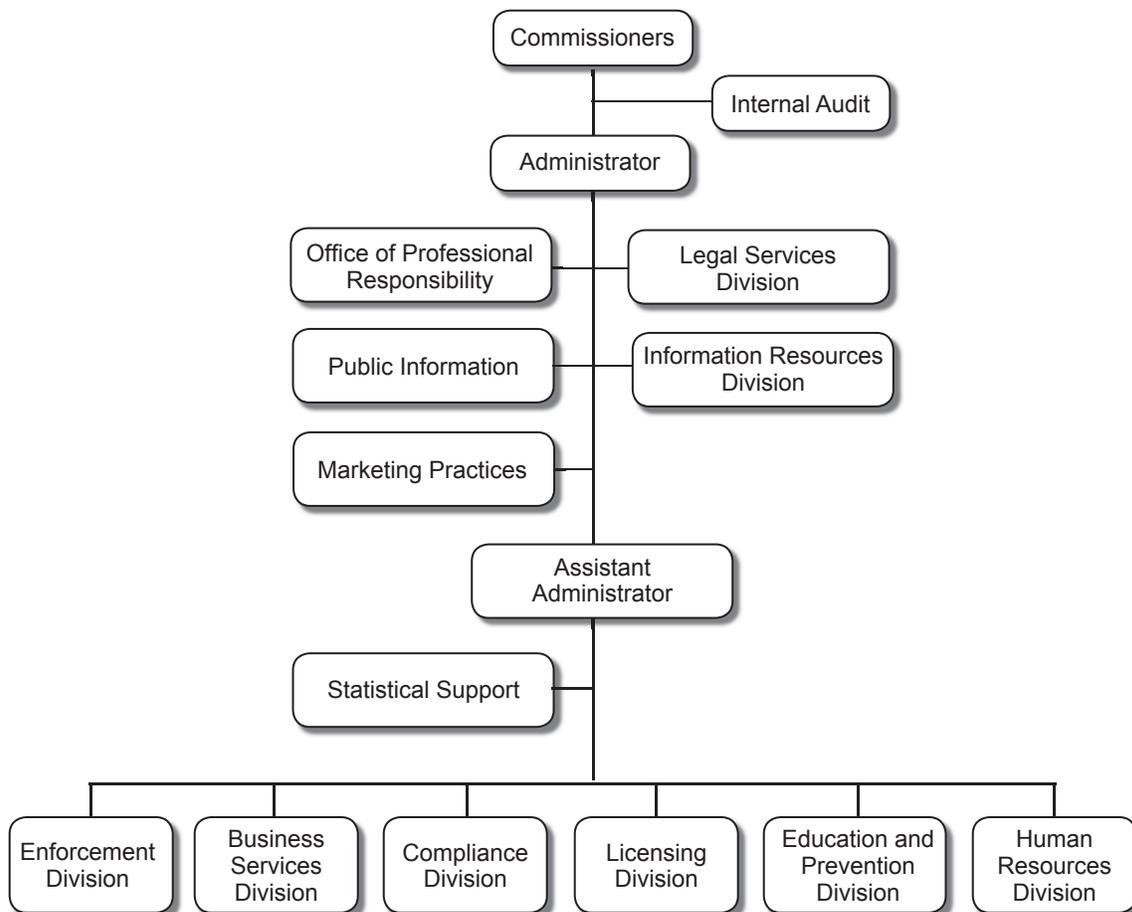
Texas Alcoholic Beverage Commission Policy Body

| Member | Residence | Term Expiration |
|----------------------|-------------|-----------------|
| John T. Steen, Chair | San Antonio | 2007 |
| Gail Madden | Dallas | 2005 |
| Jose Cuevas, Jr. | Midland | 2009 |

Staff

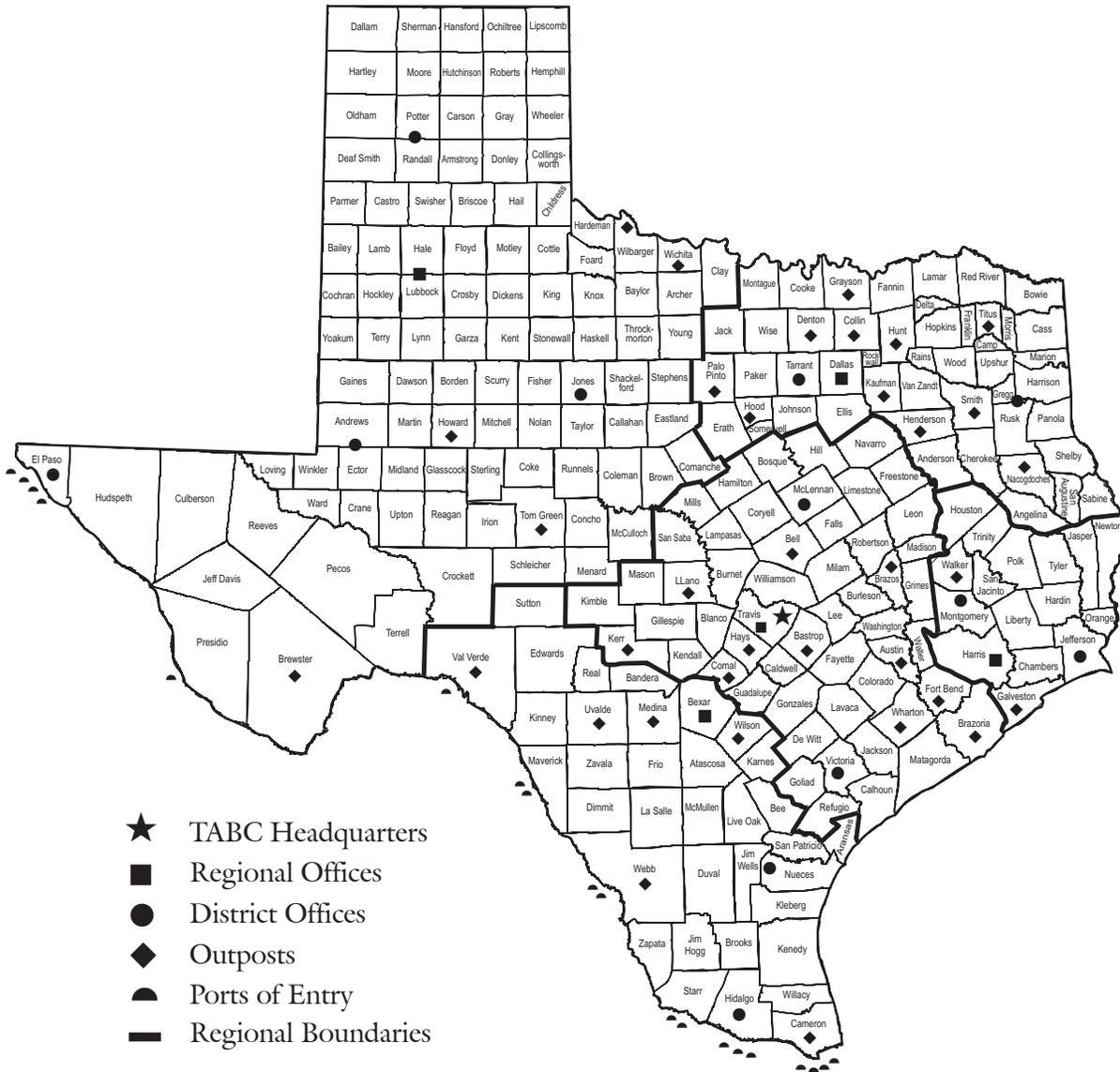
The Administrator manages the day-to-day activities of the agency, with the help of an Assistant Administrator. The agency is organized into three main divisions – Licensing, Enforcement, and Compliance – with several other divisions providing support services. The chart, *Texas Alcoholic Beverage Commission Organizational Chart*, depicts the agency's organization.

Texas Alcoholic Beverage Commission Organizational Chart



In fiscal year 2006, the agency had 686 employees. About a quarter of these employees are located at the Headquarters in Austin. The rest work in the agency's 52 field offices. The agency has divided the state into five compliance and enforcement regions, with a main regional office in each. The regional offices oversee smaller district offices as well as several outposts, some of which house only one employee. The agency also has staff at 19 ports of entry located along the Mexico border. The map, *Texas Alcoholic Beverage Commission Office Locations*, shows the location of these offices.

Texas Alcoholic Beverage Commission Office Locations



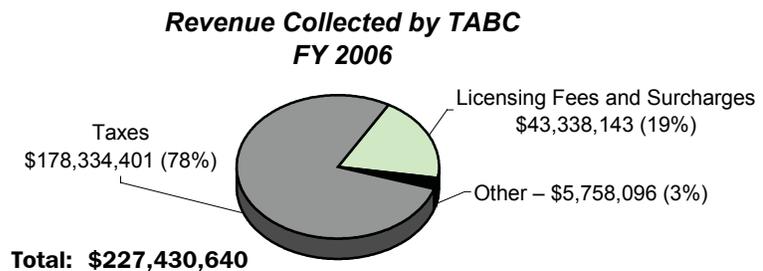
Most of the agency's personnel in its field offices are commissioned law enforcement officers. Other field personnel include compliance auditors, tax collectors at the ports of entry, and administrative support staff. In addition to their enforcement and auditing duties, many field personnel also perform licensing functions for the agency. Specifically, they help applicants fill out the proper paperwork and inspect new locations to ensure they meet licensing requirements.

A comparison of the agency's workforce composition to the minority civilian labor force over the past four years is shown in Appendix A, Equal Employment Opportunity Statistics. During the last three years, the percentage of staff the agency employed in most categories has generally met or exceeded the percentages in the civilian workforce for African-Americans and Hispanics, but has fallen short of the percentage for females.

Funding

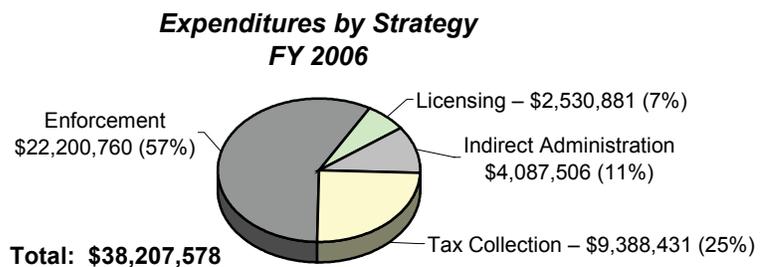
Revenues

In fiscal year 2006, the Alcoholic Beverage Commission collected more than \$227.4 million in revenue from its regulation of the alcoholic beverage industry. This revenue came from licensing fees and surcharges, taxes, penalties, and various other fees, all of which was deposited in the General Revenue Fund. The chart, *Revenue Collected by TABC*, illustrates how much money in each category the agency collected for the State in fiscal year 2006. The "Taxes" category in the chart represents excise taxes collected from wholesalers and from individuals bringing alcoholic beverages across the Mexico border, cigarette taxes collected on behalf of the Comptroller of Public Accounts, and other taxes and associated fees collected by the agency. The "Other" category represents fines, administrative fees for various agency functions, the sale of confiscated liquor, and other miscellaneous revenue collected by the agency.



Expenditures

In fiscal year 2006, the Commission spent more than \$38.2 million in four main areas: enforcement, licensing, tax collection, and administration. The chart, *Expenditures by Strategy*, provides a break down of the agency's expenditures in the previous fiscal year. The largest portion of the agency's budget went toward its enforcement function, which includes traditional law enforcement activities. Appendix B describes the Commission's use of Historically Underutilized



Businesses (HUBs) in purchasing goods and services for fiscal years 2002 to 2005. TABC has generally fallen short of the State’s HUB purchasing goals in recent years.

Agency Operations

After the repeal of Prohibition in 1935, the Legislature created, as did all other states, a regulatory structure that prohibited close ties between

alcoholic beverage manufacturers and retailers. The states required a wholesale buffer between the manufacturer and retailer, in effect creating three regulatory tiers. Known as the three-tier system, this structure was intended to protect citizens from the unregulated, unaccountable, and anonymous sale of alcohol. No ties, familial or financial, could exist between manufacturers and retailers to prevent “tied houses”

The Three Tiers

| | |
|---------------------|--|
| <i>Manufacturer</i> | <i>Upper tier.</i> Licenced to produce and sell alcoholic beverages to wholesalers. |
| <i>Wholesaler</i> | <i>Middle tier.</i> Licensed to purchase alcoholic beverages from manufacturers and sell to retailers. Referred to as wholesalers for liquor and wine products, and as distributors for beer products. |
| <i>Retailer</i> | <i>Lower tier.</i> Licensed to sell alcohol to consumers. Includes package stores, grocery stores, convenience stores, restaurants, and bars. |

where one tier unduly influences another and where corruption and organized crime dominate the alcoholic beverage industry. The textbox, *The Three Tiers*, describes the functions of each tier.

Local government also plays an important role in how alcohol is sold in all areas of the state and whether it can be sold at all. The textbox, *The Role of Local Government*, describes local option elections.

The regulatory structure that the Texas Alcoholic Beverage Commission oversees today continues to operate under the same three-tier system established at the end of Prohibition. The agency licenses businesses in each tier and enforces alcoholic beverage laws. The agency also collects alcoholic beverage taxes and administers educational programs to help prevent violations of the law, including the sale of alcohol to minors and intoxicated persons.

The Role of Local Government

The Texas Constitution permits areas of the state to hold local option elections designating what types of alcohol, if any, can be sold and how it can be sold. A city, county, or justice of the peace precinct can vote to be completely dry or to allow alcohol to be sold under a variety of circumstances, ranging from only allowing beer and wine in restaurants to allowing package stores. Even in areas that are completely dry, an organization, such as a country club or fraternal organization, may apply for a private club license to serve alcohol to its members.

TABC relies on localities to maintain the information on what areas are wet or dry. With 254 counties, nearly 850 precincts, and numerous cities, the lines between wet and dry areas can be difficult to track. Also, the boundaries of a locality can change, as with census shifts and incorporations, but the wet or dry status remains within the original voting boundaries, further complicating wet and dry tracking. Currently, approximately 89 percent of Texas counties are at least partially dry.

Licensing

Following the three-tier structure, the agency licenses manufacturers, wholesalers, and retailers of alcoholic beverages. Licensing ensures that only qualified businesses are allowed to produce, distribute, or sell alcohol in Texas. In addition, licensing qualifications ensure separation between the three tiers by prohibiting a licensee in one tier from having any financial ties to a licensee in another tier.

The agency issues 66 different kinds of licenses and some businesses need more than one license to operate. These 66 licenses fall into two general categories, as described in the textbox, *General License Types*. In fiscal year 2006, the agency issued or renewed more than 118,600 licenses, which represents approximately 42,400 licensed locations. The table, *Number of Licenses and Licensed Locations*, shows the number of licenses in each tier in fiscal year 2006. In addition to businesses, the agency licenses individuals, known as agents, who work for wholesalers and manufacturers. The “Other” category in the table includes licenses for hotel minibars and airplane alcohol sales, among others. The agency also issues temporary licenses to allow alcohol sales at special events, such as the State Fair.

| General License Types | |
|------------------------------|---|
| Primary License | The main license to sell or produce alcoholic beverages. Examples include an on-premise mixed beverage permit for a bar or restaurant, or an off-premise beer license for a grocery or convenience store that only sells beer. |
| Subordinate License | Licenses that allow a primary license holder to engage in another activity related to their business, such as a package store that provides wine tastings or a bar that wishes to stay open past midnight, in accordance with local ordinances. |

The process for obtaining each type of license shares some similarities across tiers, such as criminal and financial background checks, and all licensees are subject to local ordinances and protests by the public. However, each tier has some application differences, for example, the types of bonds needed and licensing fees vary greatly. In addition, the process for obtaining a beer, wine, or liquor license varies as well. The complexity of obtaining a license, and the associated fees, generally increase with the percentage of alcohol in the beverage sold. Less than \$400 will cover licensing fees to sell beer in a bar or restaurant, whereas the same location would have to pay an additional \$3,000 to sell mixed drinks. The fees for licensure also tend to be higher for locations where customers consume alcohol on-premise.

**Number of Licenses and Licensed Locations
FY 2006**

| Type | Number of Licenses | Number of Licensed Locations |
|---------------------|--------------------|------------------------------|
| Manufacturers | 2,754 | 2,345 |
| Manufacturer Agents | 1,010 | |
| Wholesalers | 1,009 | 283 |
| Wholesaler Agents | 28,453 | |
| Retailers | 79,108 | 39,184 |
| Temporary Licenses | 5,644 | |
| Other | 672 | 602 |
| Total | 118,657 | 42,414 |

An applicant begins the process of obtaining a license with the local TABC office. Staff interview applicants, instructing them on how to get and maintain a license, provide applicants with all necessary signs to be posted in their business, perform background checks and any other investigations that the enforcement agents deem necessary, and review applications for completeness. For a new license, the process takes approximately two months from the filing

of an application to receipt of a license. The textbox, *Licensing Requirements*, lists various requirements an applicant may have to fulfill, depending on the type of license. Once an application is complete, local TABC staff forward it to Austin for final processing and issuance of the license.

Licensing Requirements

Depending on the type of license needed, an applicant must meet the following requirements.

Notify the public through:

- ◆ 60 day posting at the location and/or in two issues of the newspaper, and
- ◆ written notice to residences within 300 feet.

Receive local authorization through:

- ◆ certification from city secretary,
- ◆ certification from county clerk, and
- ◆ hearing or waiver by county judge.

Pay fees to:

- ◆ TABC, and
- ◆ the county tax assessor collector.

Secure bonds to ensure:

- ◆ future compliance with the law, and
- ◆ future payment of taxes.

Provide detailed information regarding the personal history and financial holdings of each owner, partner, corporate officer, majority stockholder, and manager. The agency also conducts criminal history background checks.

Submit to an inspection of the location to be licensed.

All licenses must be renewed each year. The agency automatically renews a license if the licensee has not experienced location, ownership, or management changes, is up-to-date on taxes, remains free of criminal convictions and local protests, and pays all necessary renewal fees.

Retail Licenses

Because retailers sell alcoholic beverages directly to consumers, a retail license is the most complex to obtain and requires the most number of steps of all TABC licenses. In fiscal year 2006, TABC licensed approximately 39,180 retail locations. Retailers fall into two main categories: on-premise locations such as bars and restaurants, and off-premise locations such as grocery and convenience stores. Private clubs are also in the retail tier. These clubs operate in dry areas and are only allowed to serve alcohol to their members. The greatest amount of turnover occurs in the retail tier, with the average licensee staying in business for only two years. The textbox, *Two Retail Licensing Scenarios*, shows examples of what licenses a retail applicant may need and the cost in fees and surcharges required to go into business.

Two Retail Licensing Scenarios

Liquor Store: Off-Premise License

A retail store planning to sell beer, wine, and liquor for off-premise consumption would need one license for beer and another for liquor and wine. If the store wants to sell to other retail establishments, such as private clubs, they would need a local distributor's permit. If the store has another retail location, the owner would need a cartage license to transport products between locations. To offer product tastings would require another license in some instances.

Licensing fees: \$1,516

Brewpub Restaurant: On-Premise License

A brewpub restaurant planning to sell beer, wine, and mixed drinks for on-premise consumption would need one license for beer, wine, and mixed drinks, a subordinate license to brew his product on-premises, and another subordinate license to stay open until 2 a.m. if local ordinances allow.

Licensing fees: \$4,226

Wholesaler and Manufacturer Licenses

TABC licenses businesses that produce and distribute alcohol to ensure they have no ties to other sectors of the alcoholic beverage industry, most importantly retailers. TABC also ensures that licensed manufacturers and wholesalers comply with laws on properly marketing and advertising their products in Texas. In fiscal year 2006, TABC licensed 283 wholesalers and 2,345 manufacturers. In addition to the licensure of these businesses, TABC licenses certain individual agents who represent licensed wholesalers and manufacturers and work directly with retailers to sell their products. In fiscal year 2006, the agency licensed nearly 29,500 agents.

Enforcement

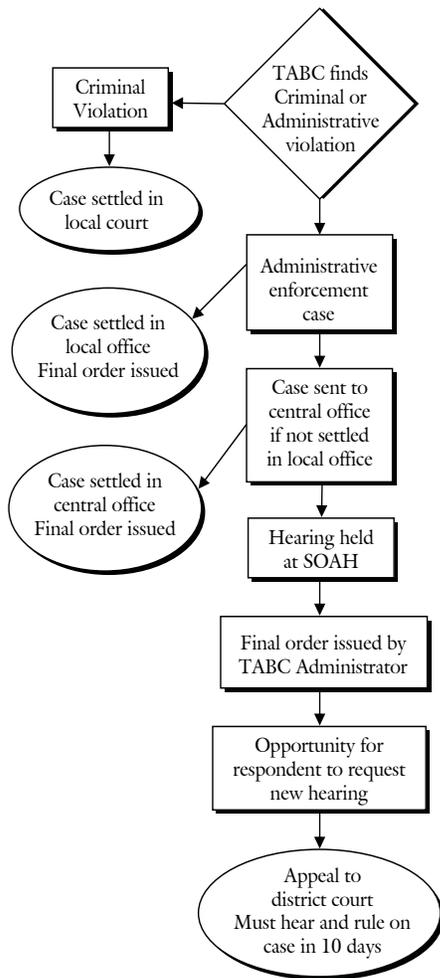
TABC enforces both administrative and criminal laws contained in the Texas Alcoholic Beverage Code, primarily through the work of its 300 law enforcement agents located throughout the state. The textbox, *Law Enforcement Activities*, provides examples of the activities TABC agents perform in enforcing the law.

Law Enforcement Activities

- ◆ Investigating complaints submitted by the public, licensees, local officials, and others.
- ◆ Monitoring bars and clubs for sales of alcohol to minors or intoxicated people.
- ◆ Investigating the source of alcoholic beverages involved in fatal traffic accidents.
- ◆ Conducting sweeps of entertainment districts to check for use of false identification.
- ◆ Conducting minor sting operations to check for retail sales of alcohol to minors.
- ◆ Inspecting retailers for valid licenses and for compliance with other requirements under the law and rules.
- ◆ Inspecting unlicensed locations such as residences, parks, or gatherings for illegal use of alcohol.
- ◆ Monitoring special events such as spring break celebrations and the State Fair.
- ◆ Conducting undercover operations in licensed premises to detect narcotics, lewd conduct, prostitution, and gambling.
- ◆ Conducting surveillance of suspects for bootlegging and other illegal activities.

Agents regularly inspect both licensed establishments, such as bars and restaurants, and non-licensed locations, such as private residences or outdoor public gatherings, to ensure compliance with the law. In fiscal year 2006, TABC's enforcement agents conducted more than 115,000 inspections of licensed and non-licensed locations. On an annual basis, TABC agents inspect about 78 percent of all licensed locations.

Enforcement Process



Agents also investigate complaints from the public, licensees, TABC employees, and other state and local agencies. The agency receives complaints through its toll-free complaint line, calls placed to local field offices, e-mail, and by direct contact with the public. In fiscal year 2006, TABC opened 4,837 complaint investigations and resolved 4,735. Nearly 75 percent of the resolved complaints were closed when the agency found no violations.

TABC also works in conjunction with local law enforcement officials on joint operations, such as providing additional agents to assist local police departments on South Padre Island during spring break. In addition, agents may provide back up assistance for other local law enforcement efforts on cases involving alcohol. For example, TABC agents will investigate the source of alcohol involved in a traffic fatality. TABC agents also work with police departments to conduct minor sting operations at bars, convenience stores, and other retailers.

Agents may take three types of action in response to a violation. Agents may file an administrative case if it involves a licensee who violates TABC law or rule; write a criminal citation against an individual who commits a misdemeanor or felony offense; or give a verbal or written warning. Other agency employees may also find administrative violations through their activities, such as compliance audits. The flow chart, *Enforcement Process*, shows how the agency handles administrative and criminal cases.

Administrative Violations

In fiscal year 2006, TABC found more than 13,000 administrative violations. The chart, *Administrative Violations Cited*, shows the different types and number of administrative violations TABC found in fiscal year 2006.

When TABC files an administrative case, a licensee may choose to settle the case by paying a fine or having their license suspended. If TABC cannot resolve an administrative case at the regional office, the agency prepares the case for a hearing before an administrative law judge with the State Office of Administrative Hearings (SOAH). In fiscal year 2006, TABC could not resolve 816 administrative cases at the regional level. Most of

**Administrative Violations Cited
FY 2006**

| Type of Violation | Number of Violations | Percent of All Violations |
|---|-----------------------------|----------------------------------|
| Failure to pay for beer by cash or check on delivery or failure to pay for liquor deliveries according to credit terms | 2,748 | 21.1 |
| Sale of alcohol to a person under age 21 or other age-law violation | 2,085 | 16.0 |
| Possession of alcohol that is unfit for human consumption | 1,033 | 7.9 |
| Failure to post license, permit, or required signs | 1,022 | 7.9 |
| Failure to conduct business in a place or manner that complies with the law, including allowing gambling, prostitution, or other illegal activity | 805 | 6.2 |
| Failure to file monthly excise tax report on time | 597 | 4.6 |
| Failure to observe private club book-keeping requirements | 554 | 4.3 |
| Mishandling of tax stamps | 542 | 4.2 |
| Failure to comply with outdoor advertising restrictions | 423 | 3.2 |
| Possession of uninvoiced or unauthorized alcoholic beverages | 345 | 2.6 |
| Sale of alcohol to intoxicated person | 294 | 2.3 |
| Sale or service of alcohol during prohibited hours | 230 | 1.8 |
| Sale or service of alcohol to non-members by a private club | 214 | 1.6 |
| Permitted or failed to report a breach of the peace on licensed premises | 200 | 1.5 |
| Drug-related offenses | 145 | 1.1 |
| Intoxicated licensee, permittee, or employee | 144 | 1.1 |
| Permit consumption or open container on premises of off-premises retailer | 131 | 1.0 |
| Violations classified as "Miscellaneous" by the agency | 569 | 4.4 |
| All other violations | 938 | 7.2 |
| Total | 13,019 | 100 |

those cases were settled by TABC's legal staff before they were heard by a SOAH judge. Only 132 cases were actually settled through a SOAH hearing. In fiscal year 2006, TABC collected \$2.9 million in fines, temporarily suspended licenses or required civil penalties in 2,783 cases, and cancelled 77 licenses. The chart, *Resolution of Administrative Cases*, shows the results of the administrative charges filed by the agency in fiscal year 2006.

**Resolution of Administrative Cases
FY 2006**

| Method of Resolution | Number of Cases* |
|--|-------------------------|
| Warning issued | 7,213 |
| Civil penalty paid or temporary suspension served | 2,783 |
| Granted safe harbor due to participation in seller/server training program | 628 |
| Dismissed | 151 |
| License cancelled | 77 |
| Other disposition | 22 |
| Total Cases Resolved | 10,874 |
| Cases Pending | 347 |
| Total Cases | 11,221 |

*One administrative case may include multiple violations.

Criminal Violations

In fiscal year 2006, the agency filed more than 20,400 criminal citations. Of these criminal citations, 40 percent, were for persons under the age of 21 possessing alcohol. The chart, *Criminal Violations Cited*, shows the type and number of citations issued by the agency in fiscal year 2006. Local courts

Criminal Violations Cited – FY 2006

| Type of Violation | Number of Citations | Percent of All Citations |
|--|---------------------|--------------------------|
| Possession of alcohol by person under age 21 | 8,169 | 39.9 |
| Public intoxication | 3,193 | 15.6 |
| Sell, serve, or make available alcohol to person under age 21 | 2,251 | 11.0 |
| Open container of alcohol in a motor vehicle | 1,184 | 5.8 |
| Sale or consumption of alcohol during prohibited hours | 575 | 2.8 |
| Other age-law offenses | 516 | 2.5 |
| Miscellaneous traffic offenses | 512 | 2.5 |
| Open container of alcohol on premises of off-premises retailer | 491 | 2.4 |
| Drug-related offenses | 479 | 2.3 |
| Disorderly conduct | 427 | 2.1 |
| Execution of warrants on behalf of other agencies | 414 | 2.0 |
| Sale to intoxicated persons | 244 | 1.2 |
| Driving while intoxicated | 159 | 0.8 |
| All other offenses | 1,873 | 9.1 |
| Total | 20,487 | 100 |

adjudicate criminal charges in the same manner as other charges brought by law enforcement agencies. Some criminal charges are arrestable offenses, in which case TABC agents will transport a suspect to the local police department or sheriff’s office for processing.

Resolution of Criminal Cases – FY 2006

| | |
|---|---------------|
| Cases pending | 15,441 |
| Convictions resulting in criminal fine or fee..... 1,814 deferred adjudication 411 jail term 318 community service..... 100 mandatory education course 88 probation..... 57 automatic drivers license suspension 21 pre-trial diversion..... 10 | 2,515 |
| Total convictions* | 2,515 |
| Cases referred to other agencies | 500 |
| Dismissals or prosecuting attorney refuses to accept the case | 225 |
| Acquittals | 10 |
| Total Criminal Cases Filed | 18,691 |

*Criminal cases can result in multiple sanctions.

The vast majority of criminal charges filed by TABC in fiscal year 2006 were still pending in the courts at the end of the fiscal year. The chart, *Resolution of Criminal Cases*, shows the results of criminal charges filed by the agency.

Compliance

In addition to enforcement, TABC performs a variety of monitoring functions to ensure licensees pay their taxes and stay in compliance with the law and agency rules. One of TABC’s largest compliance functions involves collecting alcoholic beverage taxes and auditing tax payers. Both the state and federal governments levy taxes on alcoholic beverages, as described in the textbox, *Alcoholic Beverage Taxes*.

Alcoholic Beverage Taxes

TABC collects the following taxes on alcohol.

- ◆ **Excise tax:** levied on the sale of alcohol from wholesalers to retailers. The tax has a fixed rate according to the type of alcohol that ranges from \$0.19/gallon for beer to \$2.40/gallon for distilled spirits. TABC collected \$177,205,370 in fiscal year 2006 from this tax and associated fees.
- ◆ **Personal importation tax:** levied against individuals importing alcohol from outside the state for personal consumption. TABC collected \$2,673,393 in fiscal year 2006 from this tax and associated fees.
- ◆ **Airline and passenger train beverage tax:** assessed on drinks served to passengers of airplanes flying in Texas airspace or trains traveling within Texas borders. The tax has two components, including the excise tax rate as mentioned above and a service fee of 5 cents per drink. TABC collected \$293,806 in fiscal year 2006.

The Comptroller of Public Accounts collects the following taxes on alcohol.

- ◆ **Mixed beverage tax:** assessed on mixed drinks, beer, and wine served to consumers. Licensed establishments pay the mixed beverage tax that is assessed as a percentage of a drink's sales price, currently set at 14 percent. Twenty-one percent of this tax is allocated to the counties and cities in which the tax is collected. The Comptroller collected \$507,779,816 in fiscal year 2006.
- ◆ **Sales tax:** assessed on all alcoholic beverages that are not subject to the mixed beverage tax, such as beer and wine sold at a convenience store. The sales tax rate varies between 6.25 percent and 8.25 percent depending on the local tax rate. The Comptroller cannot determine what percentage of the total sales tax collected came from alcoholic beverage sales.

In addition to state taxes, the federal Alcohol and Tobacco Tax and Trade Bureau collects the following taxes.

- ◆ **Federal excise tax:** assessed on top of each state's excise tax on the sale of alcohol from wholesalers to retailers. The tax rate varies according to the type and amount of alcoholic beverage.
- ◆ **Occupation tax:** assessed annually in the amount of \$250 for retailers, \$500 for wholesalers, and \$1,000 for manufacturers nationwide.

At the state level, TABC and the Comptroller of Public Accounts collect five different types of alcoholic beverage taxes. The Comptroller collects the sales tax and mixed beverage tax, and TABC collects all other alcohol-related taxes. Most of the tax revenue goes to the General Revenue Fund, with the exception of a portion of the sales and mixed beverage taxes, which goes to local units of government. Excluding sales tax, the State collected about \$688 million from alcoholic beverage taxes in fiscal year 2006, 26 percent of which was collected by TABC.

Ports of Entry

To ensure proper payment of the personal importation tax on alcohol, TABC operates 19 tax collection booths on the most heavily traveled international crossings along the Mexico border. TABC also collects taxes on cigarettes on behalf of the Comptroller of Public Accounts at these border crossings. Texas residents may bring no more than one quart of liquor, 24 twelve-ounce containers of beer, and three gallons of wine into the state within a 30-day period.

TABC port personnel cannot conduct searches and therefore rely on individuals to voluntarily declare the purchase of alcoholic beverages and cigarettes. Staff confiscate alcoholic beverages over the importation limits or in the possession of minors and intoxicated people. TABC staff will also confiscate cigarettes in the possession of persons under the age of 18. TABC destroys all confiscated alcohol and cigarettes. In fiscal year 2006, staff confiscated 8,728 containers of alcohol and 2,707 containers of cigarettes.

Other Compliance Activities

TABC performs numerous audits to ensure proper payment of excise taxes and compliance with other laws. TABC auditors review monthly tax returns and perform on-site audits of wholesalers who pay the tax. In fiscal year 2006, TABC conducted 93 on-site audits, which represented about 17 percent of all wholesalers in Texas. These reviews and audits also allow the agency to monitor compliance with cash and credit laws, which require retailers to pay wholesalers for their product according to certain restrictions. The agency's auditors also perform audits to ensure compliance with laws governing the operation of private clubs and requirements for food and beverage permit holders. In fiscal year 2006, TABC conducted 1,074 food and beverage analyses, representing 20 percent of all restaurants serving alcohol, and 177 private club analyses, representing 10 percent of all private clubs.

In the past few years, compliance staff have taken on new responsibilities that were once performed by TABC's enforcement agents. Compliance staff have assumed some licensing duties conducted in regional offices and are performing increasing numbers of routine inspections of retail establishments. In fiscal year 2006, compliance staff conducted 14,708 inspections, as compared to 7,261 in fiscal year 2005. Transferring these functions to non-commissioned compliance staff allows TABC's agents to spend more time on their enforcement duties.



*Compliance staff
test new products
for alcohol content
and bottle fill
and approve
beverage labels.*

Compliance staff also ensure the quality and accurate classification of alcoholic beverages by testing new products submitted by manufacturers for alcohol content and bottle fill, as well as approving beverage labels. In fiscal year 2006, TABC analyzed more than 1,300 products for introduction to the Texas market, and approved more than 11,800 beverage labels, collecting \$280,600 in fee revenue for these approvals.

Seller/Server Training

In 1987, the Legislature created a training program for sellers and servers of alcohol in the hopes of reducing sales to minors and intoxicated people. TABC administers this program, which teaches retail employees how to identify minors and intoxicated people and what the consequences are for selling alcohol to them. Sellers and servers who successfully complete a four-hour training course and pass the required test are certified for two years. In fiscal year 2006, TABC certified more than 380,000 sellers and servers, or 40 percent of all alcoholic beverage retail employees. Alcoholic beverage retailers that require their employees to be certified may claim a legal defense against administrative action if one of their employees is caught selling alcohol to a minor or intoxicated person.

TABC does not provide the training itself. Instead, the agency certifies 148 privately operated training schools, their curriculum, and their teachers to ensure they provide the proper information to sellers and servers. TABC staff monitor training classes around the state to ensure compliance with minimum course requirements.

Educational Programs

TABC conducts educational activities to raise awareness about state laws, underage drinking, driving while intoxicated, and other issues involving the use of alcohol. These programs target a variety of groups, including school children, college students, community groups, licensed businesses, and local law enforcement. The textbox, *Educational Programs*, describes a few of the agency's key underage drinking and alcohol awareness programs.

Educational Programs

Project SAVE (Stop Alcohol Violations Early) – TABC enforcement agents conduct presentations to promote compliance with state laws and help prevent underage drinking. In fiscal year 2006, the agency presented Project SAVE to more than 153,400 people.

Shattered Dreams – Community groups sponsor these events with grant funding and other support from TABC. High school students and local law enforcement officials act out dramatizations of alcohol-related car accidents to illustrate the consequences of underage drinking and driving and to help prevent these types of accidents. More than 120,100 students participated in this program in fiscal year 2006.

Safe Prom/Safe Graduation – TABC agents visit high schools to promote safe, alcohol-free prom and graduation parties; and monitor hotels and motels, where students are celebrating, for underage drinking violations.

The agency also administers several federal grants that support educational programs. In fiscal year 2006, TABC received \$350,000 from the federal Department of Justice for programs to reduce underage drinking and more than \$30,000 from the federal Department of Transportation for programs to target drunk driving. TABC used this funding for its own educational campaigns and also awarded grants to various councils of government, local law enforcement agencies, advocacy groups, and university-based programs.

Marketing Practices

TABC oversees the marketing and advertising practices of alcoholic beverage manufacturers and wholesalers to ensure compliance with laws governing these activities. Staff provide technical assistance to the alcoholic beverage industry on allowable advertising, promotion, and marketing practices for alcoholic beverages. In addition, staff investigate and monitor business relationships between the manufacturing, wholesale, and retail tiers of the industry to prevent undue influence of one tier over another.



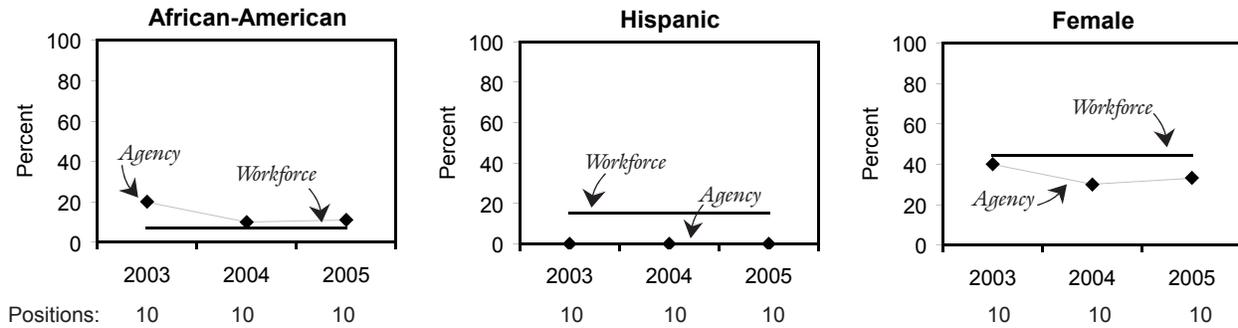
*TABC oversees
many of the
industry's
marketing and
advertising efforts.*

APPENDICES

Equal Employment Opportunity Statistics 2003 to 2005

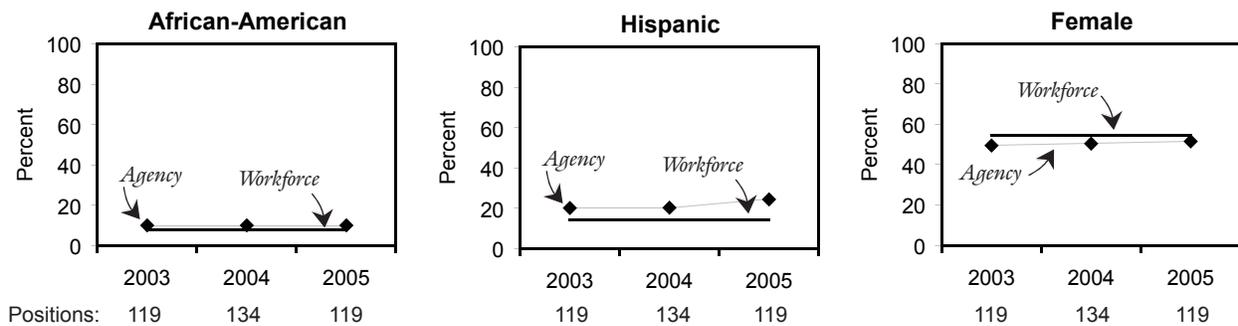
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Alcoholic Beverage Commission's employment of minorities and females in all applicable categories.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2003 to 2005. While the agency has exceeded some of the civilian workforce percentages, it has fallen below others.

Administration



TABC exceeded the civilian workforce percentage for African-Americans in this category, but fell short for Hispanic and female representation.

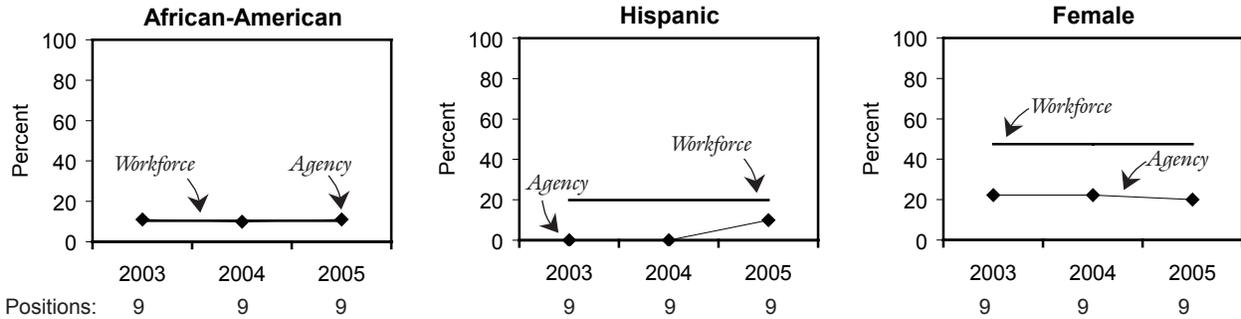
Professional



TABC exceeded the percentages for African-Americans and Hispanics in this category, but fell short for female representation.

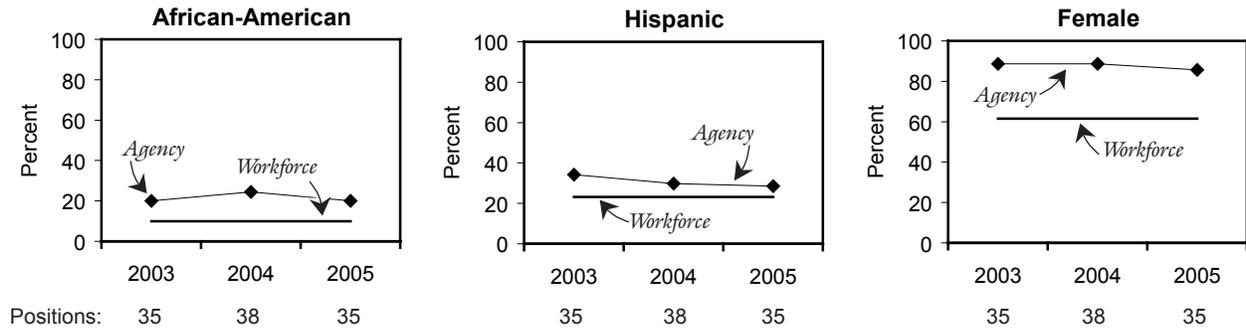
Appendix A

Technical



TABC met the percentage for African-Americans in this category, but fell short for Hispanic and female representation.

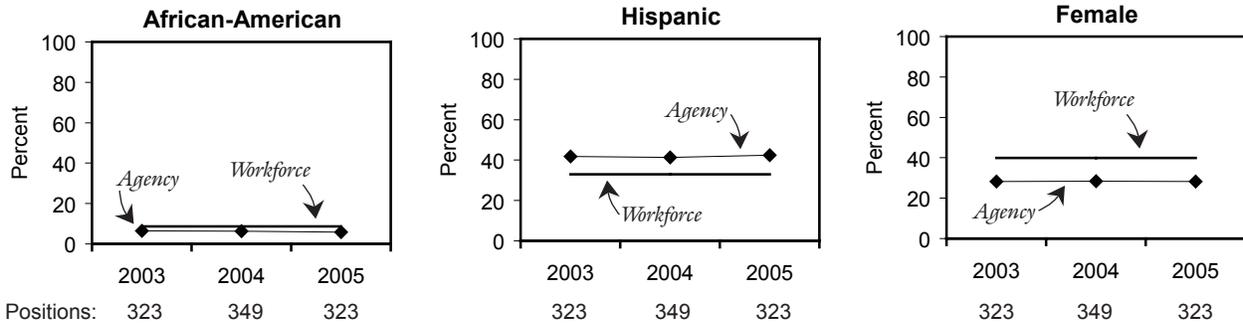
Administrative Support



TABC has exceeded the percentages for all groups in this category.

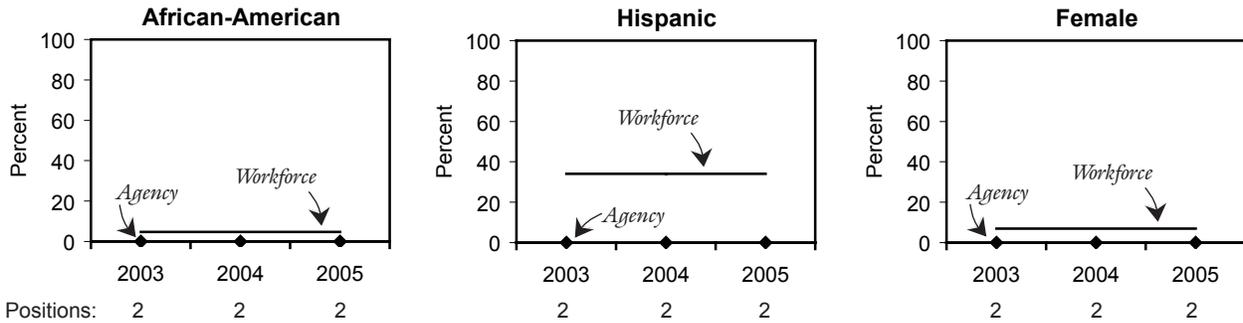
Appendix A

Service/Maintenance³



TABC exceeded the percentage for Hispanics, but fell short for African-American and female representation.

Skilled Craft



TABC fell short of the percentages for all groups in this category.

¹ Texas Government Code, sec. 325.011(9)(A).

² Texas Labor Code, sec. 21.501.

³ The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups. Examples of TABC positions in this category include enforcement agents, tax collectors, and accounts examiners.

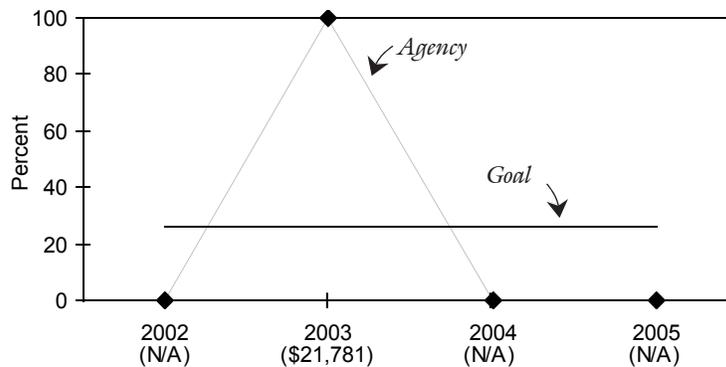
Historically Underutilized Businesses Statistics

2002 to 2005

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹ The review of the Texas Alcoholic Beverage Commission revealed that the agency appears to be complying with state requirements concerning HUB purchasing, but has not adopted its HUB policies in rule.

The following material shows trend information for the Texas Alcoholic Beverage Commission's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2002 to 2005. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. TABC has generally fallen short of the state goals in recent years.

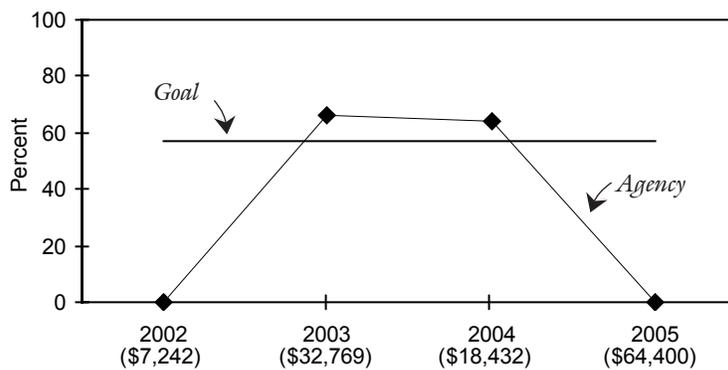
Building Construction



TABC has not spent any money in this category in the past two years.

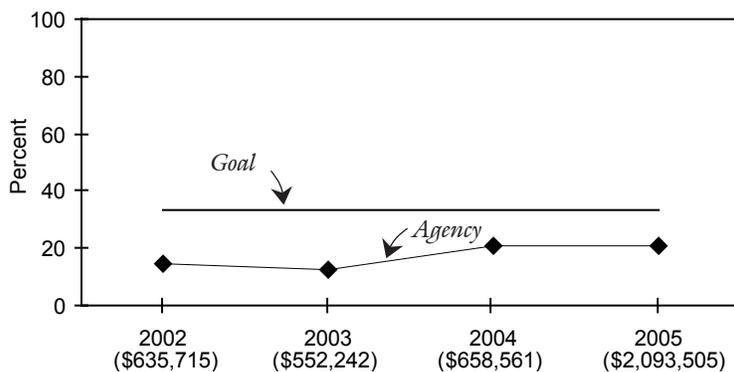
Appendix B

Special Trade



Although TABC exceeded the goal in this category in the previous two years, it failed to meet the goal in 2005.

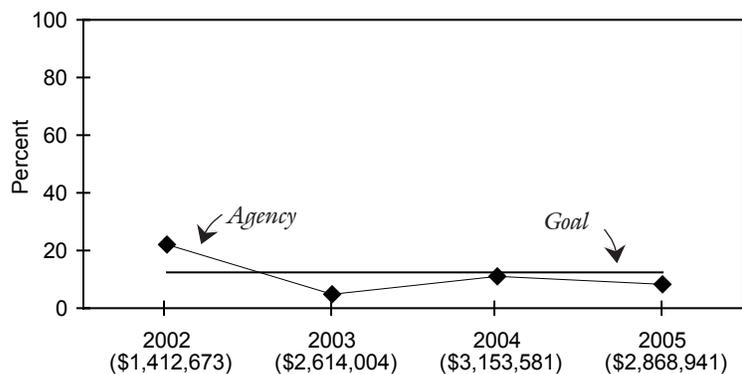
Other Services



TABC has failed to meet the goal in this category for the past four years.

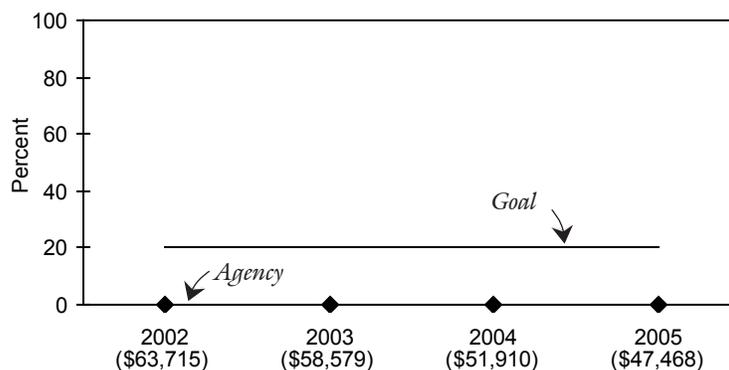
Appendix B

Commodities



TABC's spending in this category has been slightly below the goal over the past three years.

Professional Services



TABC has failed to meet the goal in this category for the past four year.

¹ Texas Government Code, sec. 325.011(9)(B).

² Texas Government Code, ch. 2161.

**SUNSET REVIEW OF THE
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

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